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Attorneys for Plaintiff and Crossclaim-Defendant  
 CALIFORNIA BERRY CULTIVARS, LLC and Cross-  
 Defendants DOUGLAS SHAW and KIRK LARSON

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

CALIFORNIA BERRY CULTIVARS, LLC,  
  
 Plaintiff,  
  
 v.  
  
 THE REGENTS OF THE UNIVERSITY OF  
 CALIFORNIA,  
  
 Defendant.

THE REGENTS OF THE UNIVERSITY OF  
 CALIFORNIA,  
  
 Cross-Complainant,  
  
 v.  
  
 CALIFORNIA BERRY CULTIVARS, LLC,  
 DOUGLAS SHAW, AND KIRK LARSON,  
  
 Cross-Defendants.

**Case No. 3:16-cv-02477-VC**

**CALIFORNIA BERRY CULTIVARS,  
 LLC, DOUGLAS SHAW, AND KIRK  
 LARSON'S OPPOSITION TO THE  
 UNIVERSITY'S MOTION TO  
 EXCLUDE EXPERT TESTIMONY  
 BY DAVID NOLTE**

Date: May 8, 2017  
 Time: 10:00 am  
 Courtroom: 4  
 Judge: Hon. Vince Chhabria

1 California Berry Cultivars, LLC, Douglas Shaw, and Kirk Larson (collectively, “CBC”)  
2 respectfully request this Court deny the motion by The Regents of the University of California  
3 (“UC”) (“UC’s Motion”) to exclude expert testimony by David Nolte (“Nolte”).

4 Nolte opined on the appropriate amount to award CBC in damages arising from UC’s  
5 interference and destruction of CBC’s intellectual property rights in the Transition Cultivars and  
6 Core Strawberry Germplasm (as defined in CBC’s Verified Complaint, ECF 2-2 at 22, and  
7 collectively referred to as “Plant Types-at-Issue”). UC Ex.<sup>1</sup> 1, CBC Ex.<sup>2</sup> A. Nolte’s  
8 methodology for computing CBC’s damages was standard and conventional. He contrasted the  
9 but-for world in which CBC could exercise its intellectual property rights in the Plant Types-at-  
10 Issue starting in December 2014 with the actual world in which CBC is denied the intellectual  
11 property rights to that material. By the time of trial in May 2017 that delay will have resulted in  
12 at least 3 years of plant development interruption and, of course, for the more than 400 destroyed  
13 genotypes, the delay is permanent and infinite. Even for preserved material, the delay may be  
14 much longer and is in UC’s hands. This delay is a fact, not an assumption.

15 Nolte also considered that when starting from scratch, the range of time from crossing to  
16 release for commercialization of a new variety is around eight years. He did not assume this.  
17 That testimony abounds in the record. *See, e.g.*, UC Ex. 5 at 147:9-12; CBC Ex. B at 163:2-7  
18 (agreeing that the range is somewhere between five and eight years). That norm would suggest  
19 that for crosses beginning in December 2014, the first new cultivar would be commercialized by  
20 about 2022, eight years. Because CBC would not have been starting from scratch, Nolte adopted  
21 the shorter end of the cycle range and started his damage calculation with commercialization with  
22 the first missing cultivar in the but-for world in 2019. The Plant Types-at Issue had already been  
23 analyzed to some extent and the Plant Types-at-Issue resulted from crosses that took place no  
24 later than 2012. UC does not complain about this assumption, which is not contradicted by

25 \_\_\_\_\_  
26 <sup>1</sup> References to “UC Ex.” refer to exhibits to the Declaration of Matthew Chivvis In  
Support of the University’s Motion to Exclude Expert Testimony by David Nolte Under FRE 702  
dated April 17, 2017.

27 <sup>2</sup> References to “CBC Ex.” refer to exhibits to the Declaration of Alexis A. Smith In  
28 Support of CBC’s Opposition to the University’s Motion to Exclude Expert Testimony by David  
Nolte Under FRE 702 dated April 24, 2017.

1 evidence.

2 Consistent with the testimony and past experience of the Doctors, who introduced one  
3 new cultivar per year on average, Nolte projected in his calculations that same frequency of new  
4 cultivars, just as UC's expert Carrie Distler ("Distler") did. *See* CBC Distler Ex. <sup>3</sup> 2 at ¶ 51.  
5 Unlike UC's Distler who projected royalty revenue from new cultivar development would extend  
6 into perpetuity, (CBC Distler Ex. 2 at ¶ 34, CBC Distler Ex. 3 at 318:13-20), Nolte cut-off  
7 computing damages for new cultivars after eight new cultivars were introduced. Had he projected  
8 more cultivars, he would have increased CBC's damages for those lost sales, but instead he  
9 conservatively stopped after the introduction of the eighth new cultivar in 2026. Ending the time  
10 for the introduction of new cultivars was an assumption highly favorable to UC. There is no  
11 contrary evidence and UC does not and cannot complain about that assumption.

12 Finally, Nolte treats the but-for world of the missing Plant Types-at-Issue separately from  
13 the development (or non-development) of the progeny of the International Semillas crosses.  
14 There is no evidence to suggest CBC would not be able to have parallel breeding operations with  
15 those International Semillas seed selections. Nolte does not assume the existence or non-  
16 existence of a parallel breeding operations. He properly analyzes harm to CBC for the loss of the  
17 intellectual property rights to the Plant Types-at-Issue, irrespective of whatever happens to the  
18 International Semillas crosses. CBC is not "capacity constrained" from carrying out two breeding  
19 operations in parallel. No evidence exists to suggest that two parallel breeding efforts would not  
20 be operationally feasible or economically desirable.

21 Nolte's opinion is a product of reliable principles and methods applied to assumptions that  
22 are factually supported; his opinion is consistent with the requirements of Fed. R. Evid. 702; and  
23 is the type of expert testimony that is routinely admitted to aid the trier of fact in assessing  
24 damages. *See e.g. Alaska Rent-A-Car, Inc. v. Avis Budget Group, Inc.*, 738 F.3d 960, 969 (9th  
25 Cir. 2013) (affirming a lower court's admission of expert testimony on damages and explaining  
26 that "[e]xpert opinion testimony is relevant if the knowledge underlying it has a valid connection

27 <sup>3</sup> References to "CBC Distler Ex." refer to exhibits to the Declaration of Alexis A. Smith  
28 In Support of CBC's Notice of Motion and Motion to Exclude the Testimony and Opinions of  
UC's Expert Carrie Distler dated April 17, 2017.

to the pertinent inquiry”) (quotations omitted). At most, UC’s quarrel with the reasonableness of the assumptions and facts underlying Nolte’s opinions is a matter to be handled by cross-examination, not exclusion. *See, e.g., Dorn v. Burlington N. Santa Fe R.R. Co.*, 397 F.3d 1183, 1196 (9th Cir. 2005) (holding “the reasonableness of the assumptions underlying the experts’ ... analysis, [or] criticisms of an expert’s method of calculation [are] matter[s] for the jury’s consideration in weighing that evidence”) (quotations omitted); *see also Summit 6, LLC v. Samsung Elecs. Co.*, 802 F.3d 1283, 1296 (Fed. Cir. 2015) (noting that “the question of whether the expert is credible or the opinion is correct is generally a question for the fact finder, not the court”) (citations omitted). Much of UC’s challenge is based on playing word games with the word “delay” – delay in getting the material, delay (or time) to develop new cultivars, or contrasting the time differences projected for the progeny of Spanish crosses with the time for introducing cultivars expected from the Transition Cultivar development. His method and calculations defy such word game confusion.

**A. NOLTE’S OPINIONS ARE GROUNDED IN FACT.**

Nolte estimated CBC’s damages, not by taking a paper projection as UC’s Distler did, but by looking to historical *actual sales* of cultivars that were invented by the very same breeders, Drs. Shaw and Larson (the “Doctors”). *See*, CBC Ex. A at p. 5 & Ex. 5 pp. 4-6; CBC Distler Ex. 2 at ¶ 33, Schs. 13a, 13b. The Doctors would have developed new cultivars from the Plant Types-at-Issue at CBC but-for UC’s wrongful conduct. Nolte projected the sales of those new cultivars by looking to the actual sales data for other cultivars invented by the Doctors that had at least five years of licensing history. UC Ex. 1 at p. 3, C.2; CBC Ex. F at 39:12-25, 40:21-25; CBC Ex. A at Ex. 5 pp. 4-6.<sup>4</sup> There should be no dispute about the accuracy of the data underlying Nolte’s opinions, as that data was provided by UC. *See e.g.*, UC Ex. 1 at p. 4 (citing reliance upon UC STRAW2 00058007, UC STRAW2 0075844, UC STRAW2 00075847, and UC STRAW2 00075842, all of which were produced by UC).

UC’s reliance on *Benjamin v. Peter’s Farm Condominium Owners Ass’n*, 820 F.2d 640

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<sup>4</sup> This exhibit was omitted from the copy of Nolte’s March 9, 2017 report that UC filed as Exhibit to its motion, so it is attached as CBC Ex. A.

(1987) is inapposite. In *Benjamin*, the economic expert opined on an injured party's post-injury earning capacity. *Id.* The expert calculated damages in reliance on the plaintiff's personal and unproven and subjective belief as to his post-injury earning capacity, despite the complete lack of evidence or actual data to support that amount. *Id.* at 641-43. That is not the case here.<sup>5</sup> Nolte appropriately looked to *objective* evidence of past sales of the Doctors' cultivars to calculate sales of new cultivars based on a plethora of evidence and actual data to support that amount. *See January v. Dr Pepper Snapple Group, Inc.*, 594 Fed. Appx. 907, 911 (9th Cir. 2014) (unpublished decision) (admitting expert opinion regarding the plaintiff's lost overtime wages based upon consideration of the plaintiff's past overtime wages).

**B. NOLTE'S OPINIONS APPLY REASONABLE METHODOLOGIES TO THE FACTS OF THE CASE TO DETERMINE CBC'S DAMAGES.**

Nolte's opinions are based on *real* data produced by UC. *See, e.g.*, CBC Ex. A (citing reliance upon UC STRAW2 00058007). In his first report, Nolte based his damages calculations on the past revenues (in dollars) received for sales of the Doctors' cultivars. He noted that the analysis would understate damages because "UC's rates have changed over time" and that a "more accurate calculation would consider the actual units." UC Ex. 1 at p. 5. Shortly after his first report and after having sufficient time to review information about unit sales that UC designated under the protective order, he recalculated CBC's damages based on actual unit sales data for increased accuracy. *See* CBC Ex. A at p. 2.

UC twists Nolte's statement that "just the drafting time" took "something in the vicinity of two days," UC Ex. 2 at 8:4-8, to assert that "he spent only two days on the entire process of reviewing the information on which he supposedly relied, analyzing it, forming his opinions, and drafting his initial eight page disclosure." UC Motion at 2. This is not so. He spent considerably more time for the entire process resulting in his opinions. Nolte reviewed relevant evidence prior

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<sup>5</sup> UC's reliance on *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802 (1988) is similarly misplaced. *McGlinchy* involved an expert who forecasted lost sales by starting with "divined" future sales and working backwards by plugging in whatever compound growth rate would work (in that case using a 41% compound annual growth rate) to link his "divined" damages figure to actual past sales. *Id.* at 807. UC makes no similar contention here, nor could it. Nolte started by looking to past sales and then applied a modest 4% long term growth rate to calculate the future lost sales. UC Ex. 1 at 7; CBC Ex. A at Ex. 5 p.1 n.2 & p. 2 n.2. *McGlinchy* is utterly irrelevant.

1 to CBC's request to share UC-designated Highly Confidential – Attorneys' Eyes Only  
 2 ("HCAEO") materials. Only the UC-designated "HCAEO" materials were unavailable until UC  
 3 confirmed it did not object to disclosure of materials to Nolte. Since much of the relevant data for  
 4 UC strawberry sales is publicly available or in the possession of Doug Shaw, Nolte was able to  
 5 analyze relevant information and begin preparing his calculations in advance of UC's  
 6 confirmation. *See, e.g.*, CBC Ex. C at UC\_STRAW2\_00077144 (showing "Gross Strawberry  
 7 Licensing Revenue" by year since 2004). He also continued his analysis in preparing his  
 8 supplemental report.

9 It is true that Nolte confirmed various key facts by interviewing Dr. Shaw and Lucky  
 10 Westwood, but reliance on witnesses to inform him of testimony that will be adduced at trial is  
 11 not improper. *See, e.g., Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 592 (1993) (stating  
 12 that "an expert is permitted wide latitude to offer opinions, including those that are not based on  
 13 firsthand knowledge or observation"); *see also* 7 Annotated Patent Digest § 44:46.50 ("an expert  
 14 opinion does not become fatally inadmissible just because the expert assumed a certain set of  
 15 facts").

16 And, those key facts are all supported in the record. For example, Drs. Shaw and Larson  
 17 retired from UC in November 2014. *See, e.g.*, ECF 155 at 181:23-182:6. Around the time of the  
 18 Doctors' retirement, there were more than 800 Transition Cultivars and 168 varieties in the Core  
 19 Strawberry Germplasm that were subject to an omnibus patent application. ECF 145-21 at 31-32;  
 20 CBC Distler Exs. 15 & 16; ECF 173-26 at 2. The Doctors invented all of the nine cultivars  
 21 (Camino Real, Ventana, Albion, Palomar, Monterey, San Andreas, Portola, Benicia, and Mojave),  
 22 the sales of which were utilized by Nolte to predict the average sales per cultivar for the eight  
 23 missing cultivars. ECF 145-13 at 55, 64, 73, 81, 89, 96, 104, 111, 120. The average time from  
 24 making the first crosses to commercial release of a cultivar is six to eight years. *See, e.g.*, UC Ex.  
 25 5 at 147:9-12. Finally, the Doctors historically generated an average of one cultivar per year for  
 26 commercial release. *See* ECF 145-13; CBC Distler Ex. 9; ECF 145-48 at 3; CBC Distler Ex. 1 at  
 27 ¶ 14 (identifying that the Drs. Shaw and/or Larson "patent[ed] and releas[ed] for  
 28 commercialization at least 24" patented cultivars during their tenure (which was 28 years for Dr.

Shaw and 23 years for Dr. Larson)). In sum, there is an abundance of factual support for Mr. Nolte's opinion.

1. **Nolte Assumes CBC Starts A Breeding Program Without Access To The 168 CSG And 800 TCs, Which Is An Undisputed Fact.**

Nolte opined on CBC's damages resulting from UC's interference and destruction of CBC's intellectual property rights in the 968 Plant Types-at-Issue (800 Transition Cultivars and 168 Core Strawberry Germplasm). It is undisputed that upon retirement the Doctors were forced to leave behind all the Plant Types-at-Issue in which they had intellectual property interest and now UC has destroyed at least 400 of those (CBC Ex. D at 242:1-19) without having notified the intellectual property owners, sought their permission, or offering to make the material available to CBC before the Doctors' creations and the unique genotypes were lost forever. *See, e.g.*, ECF 155-9 at 2 ("[The Doctors] left all genetic materials on site at the UC"); CBC Ex. E at CBC00004796 (where interim Dean Delany said "we will not be transferring the transition cultivars or strawberry germplasm (*writ* large) to CBC or to Dr. Shaw's [sic]"). UC criticizes Nolte's argued failure to consider CBC's allegedly "infringing use of [UC] patented cultivars." UC Motion at 3:6-7. That criticism is misplaced since CBC does not seek damages from inability to access UC-patented cultivars.

UC also argues that Nolte's opinion is inadmissible because UC's DNA expert opines that, unbeknownst to CBC, CBC possesses plants derived from 19 of the Plant Types-at-Issue. If that parentage is proven and CBC is permitted to enjoy progeny from one year of use of 2% of the population, then it may reduce the damages to a minor extent. However, it would be sheer speculation for Nolte to assume that unknown availability of 2% of the Plant Types-at-Issue would have made any significant difference in his calculation. UC cites no evidence or testimony that: (a) CBC had access to the 100% of the Plant Types-at-Issue; (b) CBC knew of any use of the Plant Types-at-Issue in the varieties it evaluates; or (c) CBC could have been made whole by access to 2% of the Plant Types-at-Issue for breeding and no access to any Plant Types-at-Issue for further development and selection.

2. **UC Claims "Nolte Assumes That CBC Will Not Release A Cultivar Until 2027." He Does Not.**



1 UC mischaracterizes Nolte's report. Nolte does not assume that CBC will release its first  
 2 cultivar in 2027. His calculation and opinion are based on CBC commercializing its first cultivar  
 3 in 2019 and its last cultivar in 2026. *See* UC Ex. 1 at p. 3 & Ex. 1; CBC Ex. A at Ex. 5 p. 1.

4 **(a) Nolte's Opinion Is Based On Eight Missing Cultivars As Supported**  
 5 **By The Relevant Evidence.**

6 Based on the facts and evidence, Nolte calculates damages for eight "missed cultivars."  
 7 The premise of Nolte's opinion is that, but-for UC misconduct, CBC: (1) would have been able to  
 8 enjoy its intellectual property rights with the Plant Types-at-Issue; and (2) would have been able  
 9 to patent, commercialize, and generate revenue from an average of one new cultivar per year  
 10 beginning with the first patent filing in 2018 and first commercialization in 2019 (the "eight  
 11 missed cultivars"). *See* UC Ex. 1 at p. 3 C.3 & C.5, p. 7 IV.6, Ex. 1 (showing commercial  
 12 introduction of the first missed cultivar in 2019, the second in 2020, and so on until the  
 13 introduction of the eighth missed cultivar in 2026). Unlike UC's Distler, Nolte cuts off that  
 14 projection after eight years of new cultivars, although it would be reasonable to assume that  
 15 CBC's commercialization of its breeding efforts would continue beyond that cutoff. Limiting  
 16 damages for only eight new cultivars is far more conservative than UC's damages expert's tactic  
 17 of seeking damages for all varieties UC might ever make in perpetuity. *See, e.g.,* CBC Distler Ex.  
 18 2 at ¶ 34. This one-missed-cultivar-per-year for eight years approach is supported by the  
 19 evidence and is abundantly clear from both of Nolte's reports. CBC Ex. F at 23:4-21; UC Ex. 1  
 20 at p. 5 & Ex. 1; CBC Ex. A at Ex. 5 p. 1; *see also* ECF 145-48 at 3; CBC Distler Ex. 9.

21 **(b) Any Assumption That CBC Will Not Suffer Harm For More Than**  
 22 **"3 years" As Claimed By UC's Expert Is Speculative and Wrong.**

23 Nolte's opinion assumes that CBC is deprived of Plant Types-at-Issue until UC grants  
 24 access for those in which CBC's intellectual property rights have not been destroyed. So far, the  
 25 delay is three years for some varieties, but the delay for at least 400 Transition Cultivars that were  
 26 destroyed by UC (despite being the subject of CBC's claims in this action) is infinite. *See, e.g.,*  
 27 CBC Ex. D at 242:1-19. If UC mitigates some of the problem and gives access to CBC, UC  
 28 could offset the damages. However, it would be speculative for Nolte to have assumed only a "3  
 year delay" as proposed by UC's expert, which would require UC to give copies of plant



1 materials now. If UC does provide the plant material, then Nolte's calculation provides the basis  
 2 for damages for a different time periods as well. *See* CBC Ex. A at p. 7, table 2 (showing  
 3 damages if CBC were to miss between four and eight cultivars).<sup>6</sup>

4 UC's argument regarding CBC's hopes for commercial release of a variety from a  
 5 separate line of germplasm being developed in connection with its consulting agreement with  
 6 International Semillas is irrelevant. In the but-for world (absent UC's misconduct), CBC would  
 7 have had the rights to exploit its intellectual property rights in 968 Plant Types-at-Issue. In the  
 8 actual world, CBC does not have access to those 968 varieties. There is no evidence of any  
 9 capacity constraints that would have prevented CBC from working with two sets of germplasm.  
 10 Nor is there any indication that International Semillas could not commercialize its cultivars at the  
 11 same time CBC commercialized cultivars from Plant Types-at-Issue. It would have been  
 12 speculative for Nolte to assume that CBC could only develop one germplasm collection or the  
 13 other. There is no evidence to support that conjecture.

14 **3. Nolte Makes Reasonable And Modest Projections Of Damages Based**  
 15 **On The Most Relevant Historical Sales Data.**

16 Nolte appropriately calculates damages for CBC's missed cultivars by looking to the sales  
 17 of the Doctors' past cultivars as the best predictors. UC Ex. 1 at p. 3. *See, e.g., January*, 594  
 18 Fed. Appx. 907 at 911. Nolte assumes that cultivars will have a 21 year life of generating  
 19 royalties based on the term of United States Plant Patents, the additional years of historical  
 20 licensing in foreign jurisdictions, and the actual historical data. *See* 35 U.S.C. § 154(a)(2); *see*  
 21 UC Ex. 1 at p. 4; CBC Ex. A at p. 4. For those cultivars not yet at the end of their licensing life,  
 22 Nolte deduces the remaining sales based on historical patterns on a cultivar-by-cultivar basis and  
 23 spreads those remaining sales over the remainder of the life of the cultivar. UC Ex. 1 at p. 6; *see*  
 24 *also* CBC Ex. A at p. 4. Then Nolte calculates the average sales per cultivar for the nine  
 25 reference cultivars and uses those average sales to project the missed sales for each of the eight  
 26 missed cultivars. UC Ex. 1 at pp. 6-7; CBC Ex. A at Ex. 5 pp. 3-6. Nolte was not required to do

27 <sup>6</sup> UC claims that Nolte "agreed that" his alternative calculations were in error. UC Motion  
 28 at 5. This is not so. Nolte said he would "give some additional thought to the label" because it  
 was "clear from [UC Counsel's] questioning it's causing some confusion." UC Ex. 2 at 38:11-13.

any different or more complicated mathematical calculations to estimate those remaining sales. *See WWP, Inc. v. Wounded Warriors Family Support, Inc.*, 628 F.3d 1032, 1040 (8th Cir. 2011) (explaining that there is “not ... an implicit requirement in Fed.R.Evid. 702 for the proffered expert to make *complicated* mathematical calculations”) (citations omitted). Nolte explains his reasonable estimates of the future royalties for the missed cultivars and also performs a “reasonableness” check by using an “arithmetic average of royalties for whatever actual licensing period exists for that cultivar.” *See* UC Ex. 1 at p. 7. Nolte conservatively calculates that but for UC misconduct, CBC would have generated approximately 1.1 billion plant sales over the life of each missing cultivar. CBC Ex. A at p. 5 & Ex. 5 p. 3.

It is true that Nolte could have used the cultivars Distler looks to in her critique of Nolte’s opinions. Indeed, had he utilized historical sales of Distler’s selected cultivars, the calculation of CBC’s damages would be substantially higher than those Nolte calculated. *See* CBC Distler Ex. 2 at ¶ 205 & Sch. 17.1. The cultivars Distler selected generated an average of 2.6 billion plant sales over the life of each cultivar, more than double the 1.1 billion lifetime plant sales that Nolte calculated. *See* CBC Distler Ex. 2 at Schedule 17.1 (showing the median amount of 1,457,864,792 plant sales over the 20 year life of a cultivar and total sales per cultivar that average 2.6 billion plant sales per cultivar). That Nolte used a more conservative approach than Distler, however, strengthens, not weakens his opinion. *See, e.g., Summit 6, LLC*, 802 F.3d at 1296 (explaining that “it is common for parties to choose different, reliable approaches in a single case and, when they do, the relative strengths and weaknesses of each approach may be exposed at trial or attacked during cross-examination. That one approach may better account for one aspect of a royalty estimation does not make other approaches inadmissible.”).

#### 4. **Nolte Cannot Include Offsets Of License Fees That Do Not Exist.**

UC argues that Nolte should have assumed that CBC would pay UC a license fee for using the preserved and destroyed Transition Cultivars. No agreement to do so exists, none would be required, to suppose a fictional one would be speculative, and the royalty negotiations in the past to avoid this dispute failed and resulted in no agreement. UC cites no authority that requires an expert to assume such facts that are *not* in the record.

Furthermore, UC's attempt to cast Nolte's opinion as "inadmissible" because his opinion assumes that CBC prevails on its claims is absurd. That assumption is a necessary predicate to his opinion, which covers CBC's damages if CBC prevails on its claims.

**5. Nolte Had Sufficient Time to Review And Did Review and Rely Upon The Relevant Facts.**

As explained in section B above, Nolte reviewed and relied upon facts that are supported by the evidence. UC focuses on the amount of *time* they *think* he reviewed the facts. Those criticisms are a mere distraction. Nolte did not testify that he spent two days on the "entire process" of formulating his opinions. Nolte was able to prepare preliminary calculations based on information that was publicly available and based on CBC documents (including documents of Douglas Shaw containing his royalty income) prior to the time he was disclosed to UC. Those calculations were modified with the additional revenue information from the UC's improperly designated HCAEO information once clearance was obtained. Regardless, UC cites no authority that requires an expert to review facts for a requisite amount of time. If UC believes Nolte failed to consider certain facts, that concern goes to the weight of his testimony, which UC may cross-examine him about at trial, not the admissibility. *See WWP, Inc.*, 628 F.3d at 1039 (finding that challenges to an economic expert's failure to consider certain facts "goes to the weight of [the expert's] testimony rather than admissibility").

**C. CONCLUSION**

For the foregoing reasons, CBC respectfully requests that this Court deny UC's request to exclude Nolte's opinions at trial.

Dated: April 24, 2017

Respectfully submitted,

Jones Day

By: /s/ Tharan Gregory Lanier

Tharan Gregory Lanier

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CULTIVARS, LLC and Cross-Defendants  
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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

CALIFORNIA BERRY CULTIVARS, LLC,

Plaintiff,

v.

THE REGENTS OF THE UNIVERSITY OF  
 CALIFORNIA,

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THE REGENTS OF THE UNIVERSITY OF  
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v.

CALIFORNIA BERRY CULTIVARS, LLC,  
 DOUGLAS SHAW, AND KIRK LARSON,

Cross-Defendants.

**Case No. 3:16-cv-02477-VC**

**DECLARATION OF ALEXIS A.  
 SMITH IN SUPPORT OF  
 CALIFORNIA BERRY CULTIVARS,  
 LLC, DOUGLAS SHAW, AND KIRK  
 LARSON'S OPPOSITION TO THE  
 UNIVERSITY'S MOTION TO  
 EXCLUDE EXPERT TESTIMONY  
 BY DAVID NOLTE UNDER FRE 702**

1 I, Alexis A. Smith, do hereby declare:

2 1. I am an attorney licensed to practice in the State of California and admitted to  
3 practice before this Court. I am an Associate with the law firm of Jones Day, counsel for Plaintiff  
4 and Crossclaim-Defendant California Berry Cultivars, LLC (“CBC”), Cross-Defendant Douglas  
5 Shaw, and Cross-Defendant Kirk Larson. I have personal knowledge of the facts contained  
6 within this declaration and, if called as a witness, would and could testify competently to them. I  
7 make this declaration in support of CBC, Dr. Shaw, and Dr. Larson’s Opposition to the  
8 University’s Motion to Exclude Testimony by David Nolte Under FRE 702.

9 2. Attached as Exhibit A is a true and correct copy of the supplemental expert report  
10 of David Nolte dated March 9, 2017.

11 3. Attached as Exhibit B is a true and correct copy of excerpts of the transcript of the  
12 December 9, 2016 deposition of Mary Delany.

13 4. Attached as Exhibit C is a true and correct copy of the University of California,  
14 Davis Internal Audit Services, College of Agricultural and Environmental Sciences Plant  
15 Breeding Program – Strawberry Breeding, Internal Audit Services Project #14-75, dated  
16 December 2014 and produced with beginning Bates number UC\_STRAW2\_00077123.

17 5. Attached as Exhibit D is a true and correct copy of excerpts of the transcript of the  
18 December 16, 2016 deposition of Steven Knapp.

19 6. Attached as Exhibit E is a true and correct copy of an email chain with a last in  
20 time email from Mary Delany to AG Kawamura dated March 23, 2015 and produced with  
21 beginning Bates number CBC00004796.

22 7. Attached as Exhibit F is a true and correct copy of excerpts of the transcript of the  
23 March 14, 2017 deposition of David Nolte.

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28 //

1 Dated: April 24, 2017

2 JONES DAY

3  
4 By: /s/ Alexis A. Smith  
5 Alexis A. Smith

6 Attorneys for Plaintiff and Crossclaim-  
7 Defendant CALIFORNIA BERRY  
8 CULTIVARS, LLC, and Cross-Defendants  
9 DOUGLAS SHAW and KIRK LARSON  
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EXHIBIT A

REDACTED  
VERSION  
OF DOCUMENT  
SOUGHT TO BE  
SEALED





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March 9, 2017

Frederick McKnight, Esq.  
Jones Day  
555 S. Flower Street, 50th Floor  
Los Angeles, CA 90071

Dear Mr. McKnight:

This supplemental report is provided in connection with California Berry Cultivars, LLC ("CBC") vs. the Regents of the University of California ("UC") (USDC Case No. 3:16-cv-02477). This report occurs because of the following:

1. On January 21, 2017 Fulcrum issued a report that included (Emphasis in the original):

*"A more accurate calculation would consider the actual units shipped to each of these territories, applied to rates that CBC would use for each geography. I intend to perform such a calculation promptly using the same general methodology described below. The more accurate calculation predictably will increase the amount of lost profits, most likely by a significant amount."*

2. In a supplemental report dated February 21, 2017, Ms. Carrie Distler included comments regarding CBC's claims for damages (her Section VI, consisting of her paragraphs 180 to 214). Certain of Ms. Distler's comments encourage Fulcrum to perform additional calculations, which are submitted in this supplemental report.

Except for the additions specifically noted herein, Fulcrum's entire January 21, 2017 report remains unchanged. Without limiting the generality of the foregoing, with the possible exception of the additional calculations attached hereto, none of Ms. Distler's comments cause me to modify any of the previously-reported conclusions. Additionally, because this supplemental report is limited to providing and explaining additional calculations, the fact that this supplemental report does not rebut conceptual errors made by Ms. Distler should not be interpreted as agreement with Ms. Distler; stated otherwise, no assumption should be made that I agree with any portion of Ms. Distler's Section VI because I do not include a discussion of why she is wrong.

In order to help avoid duplicate references and any related confusion, all lists and exhibit numbers herein will continue from what was started in Fulcrum's January 21, 2017 report.

## **I. DESCRIPTION OF ENGAGEMENT** (no change)

## **II. FACTUAL & LEGAL BACKGROUND**

CBC additionally provided the following information regarding the rates that CBC would charge, which are used in the additional calculations and conclusions expressed herein. The following rates generally are a 25% rate increase for all three territories:

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1. \$10.00 per 1,000 plants in California
2. \$11.25 per 1,000 in the U.S. outside of California
3. \$21.00 per 1,000 plants internationally

Because of the use of increased royalty rates, the 25% overall revenue increase used in Fulcrum's January 21, 2017 report is not used herein. Nevertheless, CBC continues to have opportunities for increased revenues that are not part of Fulcrum's calculations herein because of the other factors described in Fulcrum's January 21, 2017 report.

### III. INFORMATION RELIED UPON

In addition to those records described in Fulcrum's January 21, 2017 report, Fulcrum relied on the following:

8. Ms. Distler's February 21, 2017 report, including all documents to which Ms. Distler cites
9. Other documents and publicly-available information, as referenced herein

### IV. SUMMARY OF FULCRUM'S CONCLUSIONS

As a result of using (i) plant quantities (vs. currency amounts) and (ii) other changes encouraged by Ms. Distler's February 21, 2017 report, the present value of lost profits comparing the but-for and actual worlds is from roughly **\$34.3 million to \$47.9 million**. There are three reasons for these amounts relative to what Fulcrum reported on January 21, 2017, which are described in the following three additional sections.

#### A. Consideration of Additional Discount Rate Alternatives

In her paragraphs 193 and 194, Ms. Distler criticizes Fulcrum's January 21, 2017 report because:

*"... The Nolte Report does not include any analysis supporting this discount rate. Mr. Nolte simply claims (without identifying any support) that this 15% is 'a reasonable discount rate for an established technology-based endeavor...."*

Fulcrum's discount rate calculations are based on generally-accepted methods on this subject. Although she misapplies inputs into these calculations and presents only partial calculations, Ms. Distler uses these same methods in her February 21, 2017 supplemental report. Specifically, Ms. Distler presents two dramatically different conclusions regarding discount rates, which (once fixed) can be used to explain why a 15% discount rate is on the high range of what is reasonable. To ensure an agreed starting point to those unfamiliar with discount rates, a decrease in the discount rate will increase damages (because of a lower present value discount). The reverse is also true.

Ms. Distler's discount rate conclusions are:

1. When Ms. Distler is calculating UC's damages, her claimed discount rate is 7.5%.<sup>1</sup> This 7.5% is calculated using a weighted average cost of capital (usually abbreviated WACC in the field of corporate finance), with approximately 50% attributed to debt and 50% attributed to equity (ownership) capital. Even though Ms. Distler claims that my 15% rate is too low when evaluating a strawberry breeding program, her damage calculation for UC's strawberry breeding

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<sup>1</sup> Distler Schedule 2c.2 from Ms. Distler's February 21, 2017 report

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program uses a 7.5% rate. While I do not agree that 7.5% is appropriate to use for either UC or CBC, Ms. Distler's objectivity can and should be called into question when she uses such transparently different conclusions for UC's vs. CBC's damages (see #2 immediately below) involving what she contends are highly similar strawberry breeding programs.

2. When Ms. Distler is calculating CBC's damages, her claimed discount rate is 20%.<sup>2</sup> Inexplicably, unlike UC's WACC, when performing a calculation for CBC, Ms. Distler fails to include any debt (which lowers the WACC). Ms. Distler concludes that CBC's cost of equity (ownership) capital is 20%, nearly twice what she used for this parameter for UC.

Part of Ms. Distler's 20% cost of equity capital is based on an industry adjustment that is based on other publicly-traded companies in the agricultural segment. These companies can be considered in determining the percentage of debt and equity in the WACC. For the agricultural companies that Ms. Distler uses in this calculation, the average weighting is approximately 30% debt and 70% equity.

The determination of individual inputs to the calculation of a discount rate can vary based on different ways of financing an enterprise. Each decision affects other inputs. The most common example involves the use of excessive debt in the capital structure, in which case the cost of equity (ownership) capital increases because the risk of business failure increases. Alternatively, if no debt exists, the cost of equity (ownership) capital decreases because business's financial risks decrease.

Putting aside Ms. Distler's transparent inconsistencies and advocacy, one can use information from Ms. Distler's February 21, 2017 report to confirm the reasonableness of the discount rate that Fulcrum used. The following illustrates that the 15% discount rate used in Fulcrum's January 21, 2017 report is at the high end of the range of reasonableness:

1. For purposes of a cost of equity capital, this illustration uses Ms. Distler's 20% cost of equity capital. This is a high starting point that provides a basis for the discount rate actually being lower than what Fulcrum presents herein.
2. For purposes of determining the percentage of debt and equity, Ms. Distler's work supports two alternatives, at either 50% or 70% equity, and either 50% or 30% debt. Because two alternatives are considered, the discount rate will be expressed as a range.
3. For purposes of the cost of debt, Fulcrum uses the prime rate (currently 3.75%) plus 200 basis points (2%). It is likely that a lower spread than 200 basis points is possible, particularly once the first cultivars have been commercialized, so this debt rate illustration provides a basis for the discount rate being lower than what Fulcrum presents herein.

With these inputs, the discount rate is calculated under two alternatives, as follows:

Table 1: WACC (discount rate) calculation using Ms. Distler's inputs

	50% debt & 50% equity	70% equity & 30% debt
Cost of Equity	20%	Same
Cost of Debt	5.75%	
Tax Rate	40%	
Weighted Average (aka discount rate)	12%	15%

<sup>2</sup> Distler Schedule 2b.1 from Ms. Distler's February 21, 2017 report

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In summary, the 15% discount rate used in Fulcrum's January 21, 2017 is reasonable (if not high, as described above). With a single input change that Ms. Distler uses for UC, a 12% discount rate is the correct result. Fulcrum's discount rate range (i.e., 12% to 15%) is used in the rest of this report.

## **B. Use of Plant Quantities** (vs. currency amounts)

See #1 in the introduction to this supplemental report. Related calculations of these amounts are shown on Exhibit 5 (Exhibits 1 through 4 are used in Fulcrum's January 21, 2017 report). As before, to determine the expected results of the eight missing cultivars, one needs to consider the entire licensing life. The expected results are determined by analyzing nine existing cultivars, and must include projections of royalties for the six cultivars that are not at the end of their licensing life. With the benefit of licensing information for each of the three territories (i.e., California, the United States outside of California, and international), projections were considered for each territory, as described herein.

In making its projections, Fulcrum looked for patterns in the historic plant quantity data. We observed that most cultivars would remain at certain sales levels for between three and seven years, drop by a certain amount, and continue at the sales level for a slightly shorter period, then drop again. Fulcrum's projections used this terraced sale structure. Fulcrum also noted that certain cultivars followed the revenue patterns of other cultivars later in their life. In those cases, Fulcrum's projections sought to follow the trends of other cultivars.

The plant quantity information<sup>3</sup> provides data through some part of 2014; the royalty dollar information<sup>4</sup> provides data through 2016. Fulcrum checked the reasonableness of the 2014, 2015 and 2016 projections by noting that the projected 2014, 2015 and 2016 plant quantities would result in the approximate royalty amounts that UC actually collected. The quantity information in 2014 appears to be incomplete for certain cultivars because the royalties that would have been collected on the quantities listed in 2014 were significantly less than the royalty amounts that UC actually collected. Related calculations are shown in Exhibit 7. In pages 4 through 6 of Exhibit 5, the data that is estimated with the benefit of royalty dollar information is highlighted in red. As shown in Exhibit 7, the overall difference between the plant data in 2014, 2015 and 2016 compared to the currency data in the same years is insignificant.

Importantly, Fulcrum continued to limit projections to no more than 21 years of royalties. International licensing, which may not be limited to the 20-year U.S. patent life, comprises additional licensing revenues. Nevertheless, in order to ensure that the damage calculation is not overstated, the 21-year limitation continues to be used, which has the known effect of understating the total value of international licensing.

As occurred before, as a reasonableness check on the above estimates for six of the existing cultivars, Fulcrum made a second calculation of future expected revenues using an arithmetic average of royalties for whatever actual licensing period exists for that cultivar. The results of this reasonableness check are shown on Exhibit 6, and result in a lifetime royalty estimate of \$20,100,000,<sup>5</sup> which supports the reasonableness of the first (primary) calculation Fulcrum prepared.

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<sup>3</sup> UC STRAW2 00058007

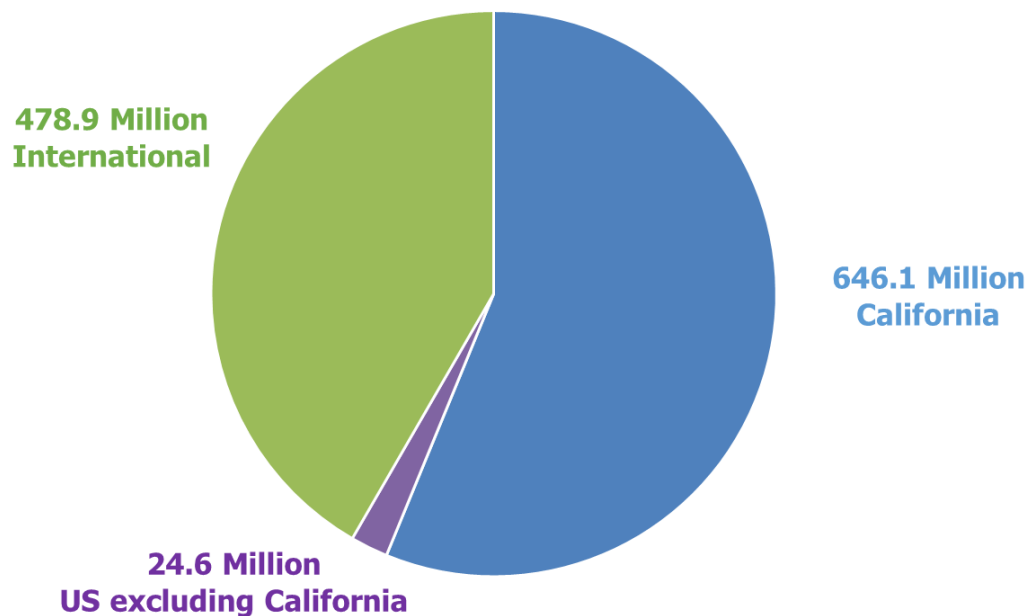
<sup>4</sup> UC STRAW2 00075844

<sup>5</sup> Rounded from \$20,099,000. See Exhibit 6 p.2

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For the nine cultivars used by Fulcrum to estimate the eight missed cultivars, a chart showing the actual and expected results follows:

### **Average Unit Sales of Cultivars Used in Model**



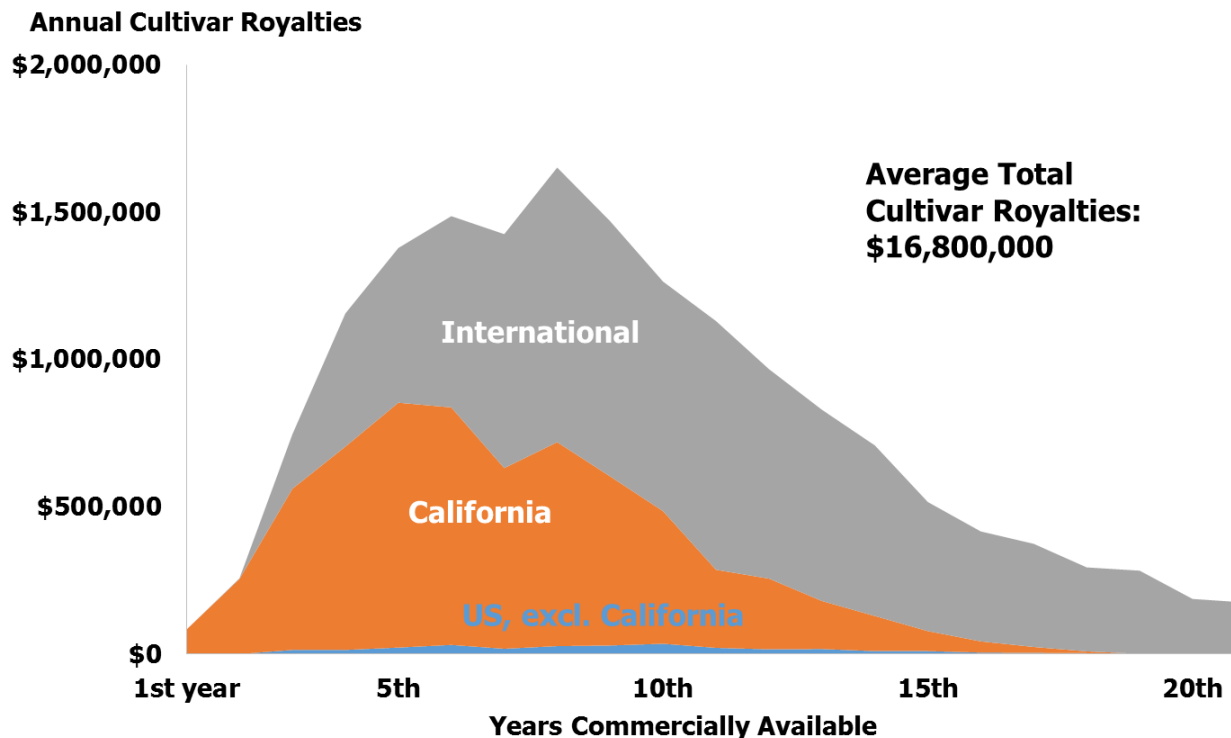
**Total Plants = 1.1 Billion**

**Source: UC STRAW2 00058007**

When priced based on CBC's royalty rates, the source and timing of CBC's expected average royalties for each of the eight missed cultivars is charted as follows:

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## CBC's average expected royalties for each new cultivar average \$16.8 million



**Source: UC STRAW2 00058007**

Using the same methodology described in Fulcrum's January 21, 2017 report, Fulcrum's revised calculations show:

1. The average cultivar generates \$16,800,000<sup>6</sup> for CBC in lifetime royalties.
2. Over the eight years that CBC will miss cultivars because of UC's conduct, CBC will miss \$134,400,000 of royalties (calculated as eight cultivars, at an average of \$16,800,000 for each cultivar).
3. Using a 15% discount rate, the damages resulting from the discounting of eight years of missed cultivars is \$34,300,000.<sup>7</sup> Using a 12% discount rate, the damages resulting from the discounting of eight years of missed cultivars is \$47,900,000.<sup>8</sup>
4. The present value discount is the difference between the cash flows that would have eventually been received, and the amount of damages that are calculated based on their present value.

<sup>6</sup> Rounded from \$16,794,000. See Exhibit 5 p. 3

<sup>7</sup> Rounded from \$34,258,357. See Exhibit 5 p. 1

<sup>8</sup> Rounded from \$47,947,397. See Exhibit 5 p. 2

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- a. Using 15%, the difference between the \$134,400,000 of undiscounted royalties, and the \$34,300,000 of damages presented herein, is \$100,100,000. The total discount is 75 percent.<sup>9</sup>
- b. Using 12%, the difference between the \$134,400,000 of undiscounted royalties, and the \$47,900,000 of damages presented herein, or \$86,400,000. The total discount is 64 percent.<sup>10</sup>

### C. Consideration of Different Periods Needed before Cultivars can be Commercialized

Based on input from CBC, Fulcrum initially used eight years as the period needed to develop a cultivar that was ready for commercialization. Ms. Distler criticizes the use of this eight-year parameter, and advocates a three-year damages period. Given that (i) CBC has been denied access to plant materials since Drs. Shaw and Larson left UC's employ in November 2014 and (ii) no cultivar has been released or is expected to be released by CBC in 2017, the three-year period Ms. Distler advocates is too short. Nevertheless, if CBC's scientific endeavors are particularly successful, and/or UC decides post-trial that it wishes to cooperate with CBC, perhaps a shorter period could be applicable. For this reason, Fulcrum considered alternatives other than the eight-year development period discussed in Fulcrum's January 21, 2017 report.

If a shorter development period is applicable, two offsetting changes occur. Specifically:

1. The number of cultivars for which damages are calculated decreases - In isolation, a decrease in the number of lost cultivars decreases the damage amount.
2. The period of time occurring before cultivars are available for commercial exploitation decreases - In isolation, a decrease in the time occurring before cultivars are available for commercial exploitation increases the damage amount because there is a smaller present value discount.

The net offsetting effect causes damages to change less than what one might expect when additional years of development occur. By using the eight years contained in Fulcrum's January 21, 2017 report (and the 15% discount rate), damages were actually smaller than what could have occurred using other parameters. Damages using alternative assumptions are calculated in Exhibit 8, and are summarized below:

Table 2: Summary of Damages using Different Discount Rate and Time Inputs

First Commercial Cultivar (# Years)	Damages Using Discount Rate		Calculation Source
	15%	12%	
2015 (4 years)	\$31.3 million	\$37.6 million	Exhibit 8 pp. 1, 5
2016 (5 years)	33.6 million	42.0 million	Exhibit 8 pp. 2, 6
2017 (6 years)	34.7 million	45.0 million	Exhibit 8 pp. 3, 7
2018 (7 years)	34.8 million	46.9 million	Exhibit 8 pp. 4, 8
2019 (8 years)	34.3 million	47.9 million	Exhibit 5 pp. 1, 2

A graph showing the preceding table follows:

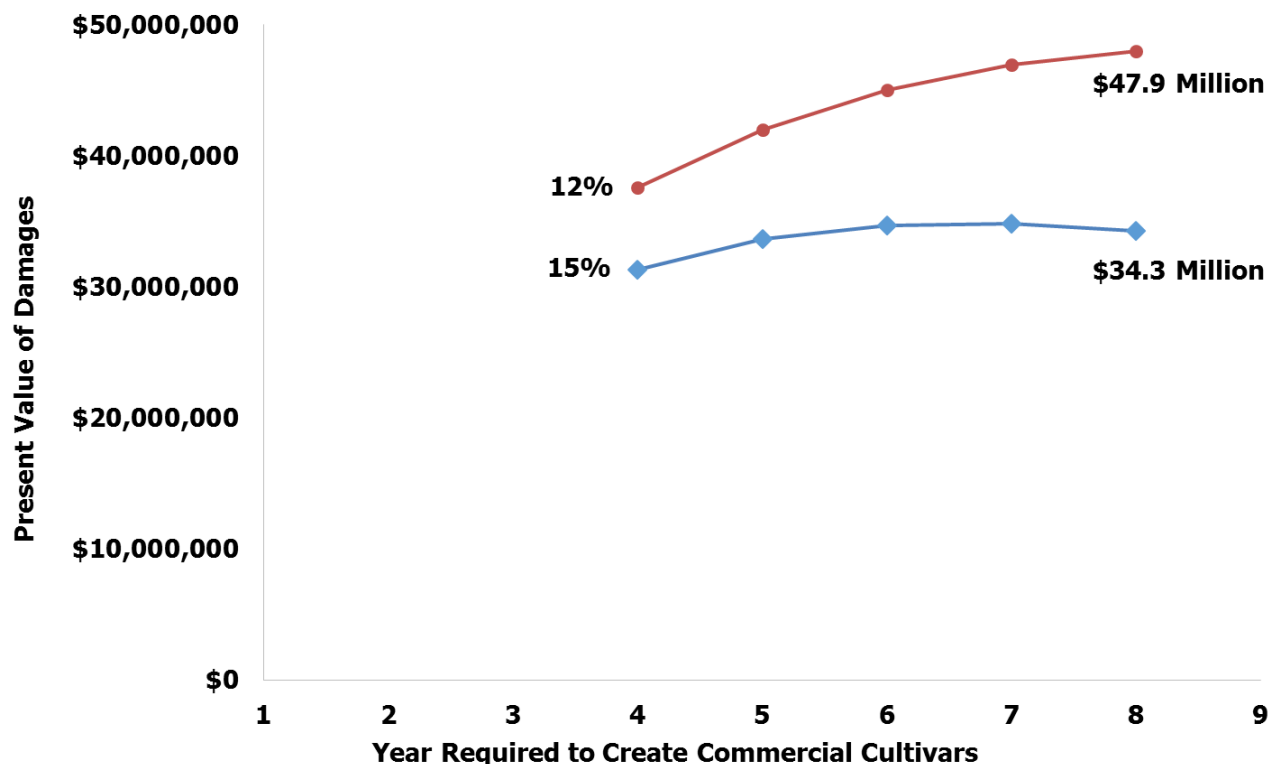
<sup>9</sup> See Exhibit 5 p. 1

<sup>10</sup> See Exhibit 5 p. 2



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## Range of CBC's Damages



The following table additionally shows the results of calculations for the 7.5% and 20% discount rates that Ms. Distler concludes is appropriate for CBC and UC, respectively:

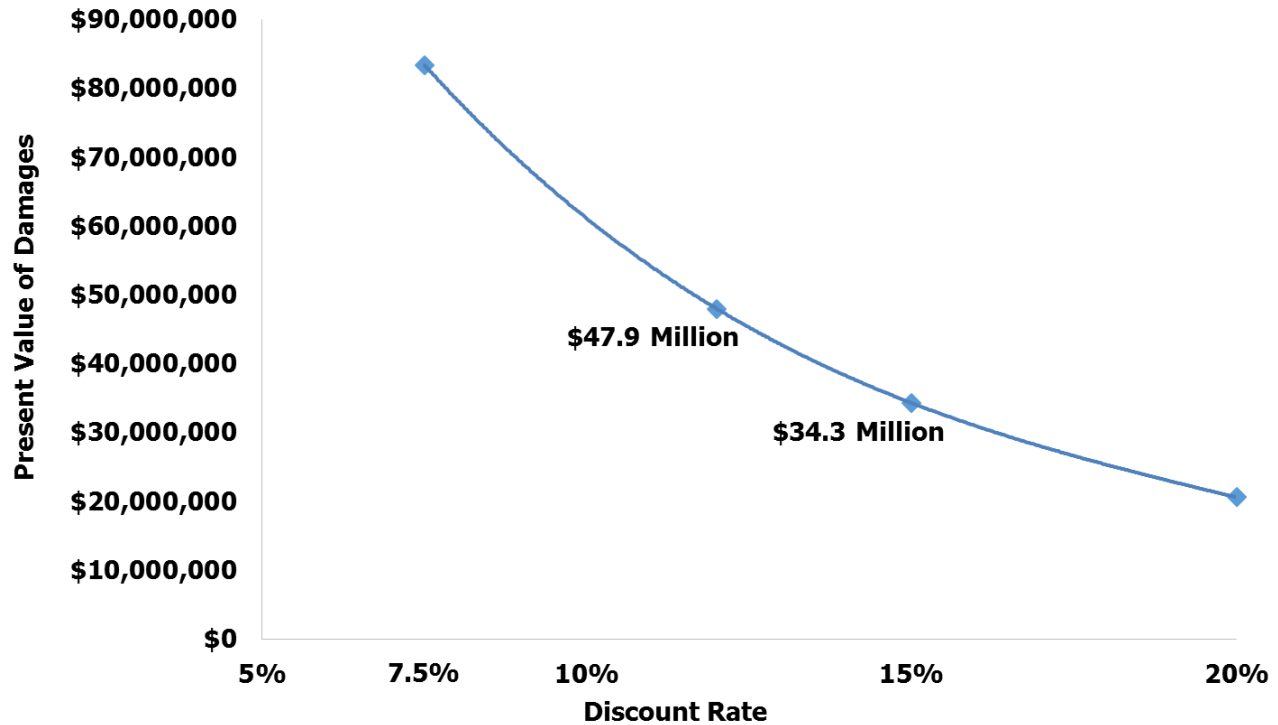
Table 3: Changes in damages using alternative discount rates

Discount Rate	Damages	Calculation Source
7.5%	\$ 83.4 million	Exhibit 8 p. 9
12%	47.9 million	Exhibit 5 p. 1
15%	34.3 million	Exhibit 5 p. 2
20%	20.6 million	Exhibit 8 p. 10

Discount rates have a dramatic impact on the calculation results, particularly when the extreme rates advocated by Ms. Distler are used. A graph showing the effect of discount rate on the damage amounts follows. The following graph illustrates the impact on the eight-year development period scenario, although a similar result would be seen using the other development period scenarios.

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## Using a Range of Reasonable Discount Rates, Damages are in the Range of \$34.3 to \$47.9 Million



Source: Assumes an 8 Year Delay

### V. OTHER REQUIRED INFORMATION (see the January 21, 2017 report)

Very truly yours,  
Fulcrum Financial Inquiry LLP

By: *David Nolte*

David Nolte

California Berry Cultivars vs. University of California  
Exhibit 5: Lost Revenue Model

Trend Analysis Projections

Net Net Discount Rate		11%	[2]										
Years of Delay		8 Years											
		A	B							C	D = sum B:C	E = A * D	
Year	Years Discounted	PV Factor	[1]	Cultivar#1	Cultivar#2	Cultivar#3	Cultivar#4	Cultivar#5	Cultivar#6	Cultivar#7	Cultivar#8	Subtotal	Present Value
2019	2.5	0.77		\$ 83,000								\$ 83,000	\$ 63,940
2020	3.5	0.69		257,000	\$ 83,000							340,000	235,965
2021	4.5	0.63		746,000	257,000	\$ 83,000						1,086,000	679,010
2022	5.5	0.56		1,156,000	746,000	257,000	\$ 83,000					2,242,000	1,262,872
2023	6.5	0.51		1,378,000	1,156,000	746,000	257,000	\$ 83,000				3,620,000	1,837,000
2024	7.5	0.46		1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000			5,106,000	2,334,310
2025	8.5	0.41		1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000		6,531,000	2,689,889
2026	9.5	0.37		1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000	8,182,000	3,035,926
2027	10.5	0.33		1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	9,568,000	3,198,379
2028	11.5	0.30		1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	10,575,000	3,184,682
2029	12.5	0.27		1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	10,959,000	2,973,266
2030	13.5	0.24		967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	10,770,000	2,632,422
2031	14.5	0.22		829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	10,221,000	2,250,662
2032	15.5	0.20		708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	9,443,000	1,873,285
2033	16.5	0.18		516,000	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	8,534,000	1,525,188
2034	17.5	0.16		416,000	516,000	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	7,299,000	1,175,199
2035	18.5	0.15		374,000	416,000	516,000	708,000	829,000	967,000	1,130,000	1,264,000	6,204,000	899,905
2036	19.5	0.13		294,000	374,000	416,000	516,000	708,000	829,000	967,000	1,130,000	5,234,000	683,968
2037	20.5	0.12		283,000	294,000	374,000	416,000	516,000	708,000	829,000	967,000	4,387,000	516,472
2038	21.5	0.11		187,000	283,000	294,000	374,000	416,000	516,000	708,000	829,000	3,607,000	382,562
2039	22.5	0.10		175,000	187,000	283,000	294,000	374,000	416,000	516,000	708,000	2,953,000	282,161
2040	23.5	0.09			175,000	187,000	283,000	294,000	374,000	416,000	516,000	2,245,000	193,253
2041	24.5	0.08				175,000	187,000	283,000	294,000	374,000	416,000	1,729,000	134,086
2042	25.5	0.07					175,000	187,000	283,000	294,000	374,000	1,313,000	91,734
2043	26.5	0.06						175,000	187,000	283,000	294,000	939,000	59,103
2044	27.5	0.06							175,000	187,000	283,000	645,000	36,574
2045	28.5	0.05								175,000	187,000	362,000	18,493
2046	29.5	0.05									175,000	175,000	8,054
Notes:												\$ 134,352,000	\$ 34,258,357
[1] Uses mid-year convention												75%	

California Berry Cultivars vs. University of California  
Exhibit 5: Lost Revenue Model

Trend Analysis Projections

Net Net Discount Rate		8% [2]											
Years of Delay		8 Years											
		A	B								C	D = sum B:C	E = A * D
Year	Years Discounted	PV Factor [1]	Cultivar#1	Cultivar#2	Cultivar#3	Cultivar#4	Cultivar#5	Cultivar#6	Cultivar#7	Cultivar#8	Subtotal	Present Value	
2019	2.5	0.82	\$ 83,000								\$ 83,000	\$ 68,473	
2020	3.5	0.76	257,000	\$ 83,000							340,000	259,714	
2021	4.5	0.71	746,000	257,000	\$ 83,000						1,086,000	768,109	
2022	5.5	0.65	1,156,000	746,000	257,000	\$ 83,000					2,242,000	1,468,267	
2023	6.5	0.61	1,378,000	1,156,000	746,000	257,000	\$ 83,000				3,620,000	2,195,099	
2024	7.5	0.56	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000			5,106,000	2,866,835	
2025	8.5	0.52	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000		6,531,000	3,395,297	
2026	9.5	0.48	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000	8,182,000	3,938,527	
2027	10.5	0.45	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	9,568,000	4,264,535	
2028	11.5	0.41	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	10,575,000	4,364,226	
2029	12.5	0.38	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	10,959,000	4,187,685	
2030	13.5	0.35	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	10,770,000	3,810,614	
2031	14.5	0.33	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	10,221,000	3,348,489	
2032	15.5	0.30	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	9,443,000	2,864,454	
2033	16.5	0.28	516,000	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	8,534,000	2,396,959	
2034	17.5	0.26	416,000	516,000	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	7,299,000	1,898,225	
2035	18.5	0.24	374,000	416,000	516,000	708,000	829,000	967,000	1,130,000	1,264,000	6,204,000	1,493,937	
2036	19.5	0.22	294,000	374,000	416,000	516,000	708,000	829,000	967,000	1,130,000	5,234,000	1,166,999	
2037	20.5	0.21	283,000	294,000	374,000	416,000	516,000	708,000	829,000	967,000	4,387,000	905,692	
2038	21.5	0.19	187,000	283,000	294,000	374,000	416,000	516,000	708,000	829,000	3,607,000	689,502	
2039	22.5	0.18	175,000	187,000	283,000	294,000	374,000	416,000	516,000	708,000	2,953,000	522,672	
2040	23.5	0.16		175,000	187,000	283,000	294,000	374,000	416,000	516,000	2,245,000	367,924	
2041	24.5	0.15			175,000	187,000	283,000	294,000	374,000	416,000	1,729,000	262,369	
2042	25.5	0.14				175,000	187,000	283,000	294,000	374,000	1,313,000	184,484	
2043	26.5	0.13					175,000	187,000	283,000	294,000	939,000	122,162	
2044	27.5	0.12						175,000	187,000	283,000	645,000	77,697	
2045	28.5	0.11							175,000	187,000	362,000	40,377	
2046	29.5	0.10								175,000	175,000	18,073	
Notes:											\$ 134,352,000	\$ 47,947,397	
[1] Uses mid-year convention												64%	

**California Berry Cultivars vs. University of California****Exhibit 5: Lifetime Royalty Calculation**

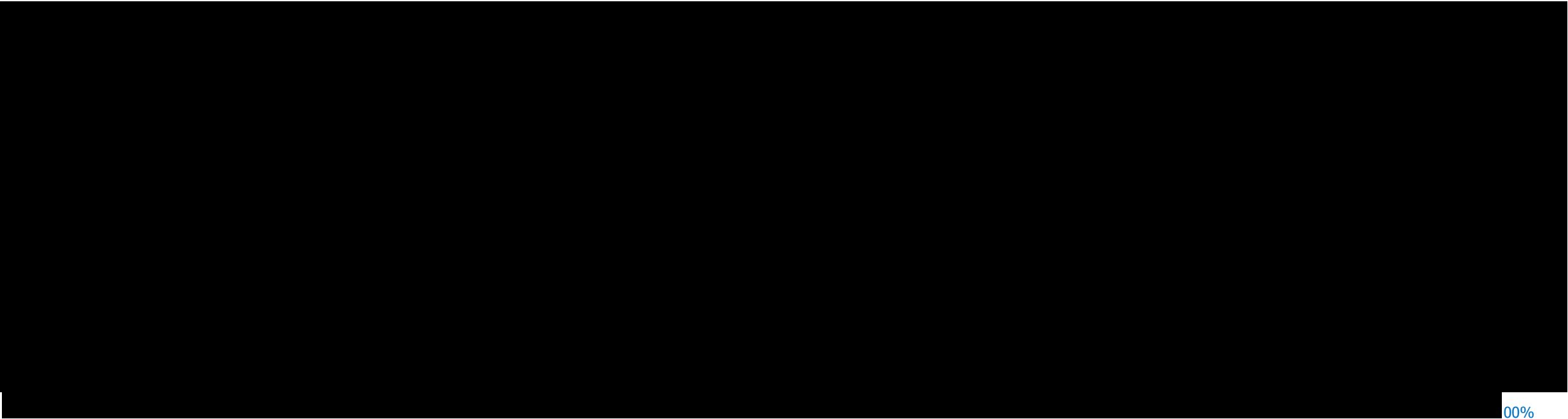
Trend Analysis

	<i>A</i>	<i>B</i>	<i>C = A * B</i>					
	Average Units	Royalties (\$/1000)	Expected Royalties					
California	646,103,605	\$ 10.00	\$ 6,461,036					
United States	24,638,518	11.25	277,183					
International	478,916,148	21.00	10,057,239					
	1,149,658,271		\$ 16,795,458					
	<i>D</i>	<i>E = C * D</i>	<i>F</i>	<i>G = C * F</i>	<i>H</i>	<i>I = C * H</i>	<i>J = E + G + I</i>	
	California		United States		International			
	%	Expected Royalties	%	Expected Royalties	%	Expected Royalties	Total Royalties	
1st year	1%	\$ 83,000	0%	\$ -	0%	\$ -	\$ 83,000	
	4%	255,000	0%	-	0%	2,000	257,000	
	8%	547,000	5%	14,000	2%	185,000	746,000	
5th	11%	690,000	5%	14,000	4%	452,000	1,156,000	
	13%	831,000	8%	22,000	5%	525,000	1,378,000	
	12%	806,000	11%	31,000	6%	649,000	1,486,000	
	9%	613,000	7%	18,000	8%	794,000	1,425,000	
	11%	692,000	10%	27,000	9%	932,000	1,651,000	
10th	9%	574,000	11%	29,000	9%	866,000	1,469,000	
	7%	450,000	13%	35,000	8%	779,000	1,264,000	
	4%	265,000	8%	21,000	8%	844,000	1,130,000	
	4%	240,000	6%	16,000	7%	711,000	967,000	
	3%	163,000	6%	17,000	6%	649,000	829,000	
15th	2%	119,000	4%	10,000	6%	579,000	708,000	
	1%	68,000	3%	10,000	4%	438,000	516,000	
	1%	38,000	2%	5,000	4%	373,000	416,000	
	0%	20,000	1%	4,000	3%	350,000	374,000	
	0%	6,000	1%	3,000	3%	285,000	294,000	
20th	0%	-	0%	1,000	3%	282,000	283,000	
	0%	-	0%	-	2%	187,000	187,000	
	0%	-	0%	-	2%	175,000	175,000	
	(rounded)	100%	\$ 6,460,000	100%	\$ 277,000	100%	\$ 10,057,000	\$ 16,794,000
							(rounded)	

California Berry Cultivars vs. University of California  
Exhibit 5: Strawberry Cultivar Unit Sales Analysis  
Trend Projections - California

Average Unit Sales 646,103,605

<u>Camino Real (2001-125)</u>	<u>Ventana (2001-126)</u>	<u>Albion (2004-323)</u>	<u>Palomar (2007-274)</u>	<u>Monterey (2008-332)</u>	<u>San Andreas (2008-333)</u>	<u>Portola (2008-334)</u>	<u>Benicia (2010-492)</u>	<u>Mojave (2010-493)</u>	<u>TOTALS</u>
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Notes:

- [1] The source data for 2014 is apparently incomplete; 2014 units do not approach the 2014 royalties recorded.
- [2] Unit data is lacking; however, total royalties are not. Unit projections are made to tie to actual royalties.

Source: UC\_STRAW2\_00058007  
CONTAINS ATTORNEYS EYES ONLY INFORMATION

California Berry Cultivars vs. University of California  
Exhibit 5: Strawberry Cultivar Unit Sales Analysis  
Trend Projections - United States

Average Unit Sales	24,638,518								
Camino Real (2001-125)	Ventana (2001-126)	Albion (2004-323)	Palomar (2007-274)	Monterey (2008-332)	San Andreas (2008-333)	Portola (2008-334)	Benicia (2010-492)	Mojave (2010-493)	TOTALS



## California Berry Cultivars vs. University of California

### Exhibit 5: Strawberry Cultivar Unit Sales Analysis

## Trend Projections - International

Average Unit Sales 478,916,148

Camino Real (2001-125)	Ventana (2001-126)	Albion (2004-323)	Palomar (2007-274)	Monterey (2008-332)	San Andreas (2008-333)	Portola (2008-334)	Benicia (2010-492)	Mojave (2010-493)	TOTALS

00%

Notes:

- [1] The source data for 2014 is apparently incomplete; 2014 units do not approach the 2014 royalties recorded.  
[2] Unit data is lacking; however, total royalties are not. Unit projections are made to tie to actual royalties.

Source: UC\_STRAW2\_00058007

CONTAINS ATTORNEYS EYES ONLY INFORMATION

California Berry Cultivars vs. University of California  
Exhibit 6: Lost Revenue Model  
Cultivar Average Projections

Net Net Discount Rate 11% [2]

		A	B									C	D = sum B:C	E = A * D
Years														
Year	Discounted	PV Factor [1]	Cultivar#1	Cultivar#2	Cultivar#3	Cultivar#4	Cultivar#5	Cultivar#6	Cultivar#7	Cultivar#8	Subtotal	Present Value		
2019	2.5	0.77	\$ 83,000								\$ 83,000	\$ 63,940		
2020	3.5	0.69	257,000	\$ 83,000							340,000	235,965		
2021	4.5	0.63	746,000	257,000	\$ 83,000						1,086,000	679,010		
2022	5.5	0.56	1,156,000	746,000	257,000	\$ 83,000					2,242,000	1,262,872		
2023	6.5	0.51	1,378,000	1,156,000	746,000	257,000	\$ 83,000				3,620,000	1,837,000		
2024	7.5	0.46	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000			5,106,000	2,334,310		
2025	8.5	0.41	1,148,000	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000		6,254,000	2,575,802		
2026	9.5	0.37	1,347,000	1,148,000	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000	7,601,000	2,820,346		
2027	10.5	0.33	1,174,000	1,347,000	1,148,000	1,486,000	1,378,000	1,156,000	746,000	257,000	8,692,000	2,905,551		
2028	11.5	0.30	1,034,000	1,174,000	1,347,000	1,148,000	1,486,000	1,378,000	1,156,000	746,000	9,469,000	2,851,608		
2029	12.5	0.27	940,000	1,034,000	1,174,000	1,347,000	1,148,000	1,486,000	1,378,000	1,156,000	9,663,000	2,621,650		
2030	13.5	0.24	941,000	940,000	1,034,000	1,174,000	1,347,000	1,148,000	1,486,000	1,378,000	9,448,000	2,309,296		
2031	14.5	0.22	923,000	941,000	940,000	1,034,000	1,174,000	1,347,000	1,148,000	1,486,000	8,993,000	1,980,256		
2032	15.5	0.20	871,000	923,000	941,000	940,000	1,034,000	1,174,000	1,347,000	1,148,000	8,378,000	1,662,012		
2033	16.5	0.18	945,000	871,000	923,000	941,000	940,000	1,034,000	1,174,000	1,347,000	8,175,000	1,461,028		
2034	17.5	0.16	945,000	945,000	871,000	923,000	941,000	940,000	1,034,000	1,174,000	7,773,000	1,251,516		
2035	18.5	0.15	945,000	945,000	945,000	871,000	923,000	941,000	940,000	1,034,000	7,544,000	1,094,275		
2036	19.5	0.13	945,000	945,000	945,000	945,000	871,000	923,000	941,000	940,000	7,455,000	974,203		
2037	20.5	0.12	945,000	945,000	945,000	945,000	945,000	871,000	923,000	941,000	7,460,000	878,249		
2038	21.5	0.11	945,000	945,000	945,000	945,000	945,000	945,000	871,000	923,000	7,464,000	791,640		
2039	22.5	0.10	945,000	945,000	945,000	945,000	945,000	945,000	945,000	871,000	7,486,000	715,291		
2040	23.5	0.09		945,000	945,000	945,000	945,000	945,000	945,000	945,000	6,615,000	569,429		
2041	24.5	0.08			945,000	945,000	945,000	945,000	945,000	945,000	5,670,000	439,714		
2042	25.5	0.07				945,000	945,000	945,000	945,000	945,000	4,725,000	330,115		
2043	26.5	0.06					945,000	945,000	945,000	945,000	3,780,000	237,921		
2044	27.5	0.06						945,000	945,000	945,000	2,835,000	160,757		
2045	28.5	0.05							945,000	945,000	1,890,000	96,551		
2046	29.5	0.05								945,000	945,000	43,491		
											\$ 160,792,000	\$ 35,183,802		

78%

Notes:  
[1] Uses mid-year convention  
[2] 15% discount rate less assumed 4% long-term growth rate

**California Berry Cultivars vs. University of California****Exhibit 6: Lifetime Royalty Calculation**

Cultivar Average

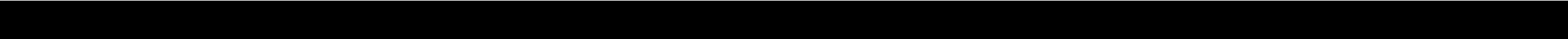
	<i>A</i>	<i>B</i>	<i>C = A * B</i>
	Average Units	Royalties (\$/1000)	Expected Royalties
California	1,015,800,632	\$ 10.00	\$ 10,158,006
United States	29,471,991	11.25	331,560
International	457,812,422	21.00	9,614,061
	<u>1,503,085,045</u>		<u>\$ 20,103,627</u>

	<i>D</i>	<i>E = C * D</i>	<i>F</i>	<i>G = C * F</i>	<i>H</i>	<i>I = C * H</i>	<i>J = E + G + I</i>
	California		United States		International		Total Royalties
	%	Expected Royalties	%	Expected Royalties	%	Expected Royalties	
1st year	1%	\$ 83,000	0%	\$ -	0%	\$ -	\$ 83,000
	3%	255,000	0%	-	0%	2,000	257,000
	5%	547,000	4%	14,000	2%	185,000	746,000
	7%	690,000	4%	14,000	5%	452,000	1,156,000
5th	8%	831,000	7%	22,000	5%	525,000	1,378,000
	8%	806,000	9%	31,000	7%	649,000	1,486,000
	6%	560,000	5%	16,000	6%	572,000	1,148,000
	6%	654,000	7%	22,000	7%	671,000	1,347,000
	5%	525,000	7%	23,000	7%	626,000	1,174,000
10th	4%	407,000	9%	29,000	6%	598,000	1,034,000
	2%	250,000	5%	16,000	7%	674,000	940,000
	4%	422,000	4%	13,000	5%	506,000	941,000
	4%	407,000	5%	15,000	5%	501,000	923,000
	4%	387,000	3%	10,000	5%	474,000	871,000
15th	5%	476,000	5%	15,000	5%	454,000	945,000
	5%	476,000	5%	15,000	5%	454,000	945,000
	5%	476,000	5%	15,000	5%	454,000	945,000
	5%	476,000	5%	15,000	5%	454,000	945,000
	5%	476,000	5%	15,000	5%	454,000	945,000
20th	5%	476,000	5%	15,000	5%	454,000	945,000
	5%	476,000	5%	15,000	5%	454,000	945,000
(rounded)	100%	\$ 10,156,000	100%	\$ 330,000	100%	\$ 9,613,000	<u>\$ 20,099,000</u> (rounded)

California Berry Cultivars vs. University of California  
Exhibit 6: Strawberry Cultivar Unit Sales Analysis  
Cultivar Average Projections - California

Average Unit Sales 1,015,800,632

Camino Real (2001-125)	Ventana (2001-126)	Albion (2004-323)	Palomar (2007-274)	Monterey (2008-332)	San Andreas (2008-333)	Portola (2008-334)	Benicia (2010-492)	Mojave (2010-493)	TOTALS

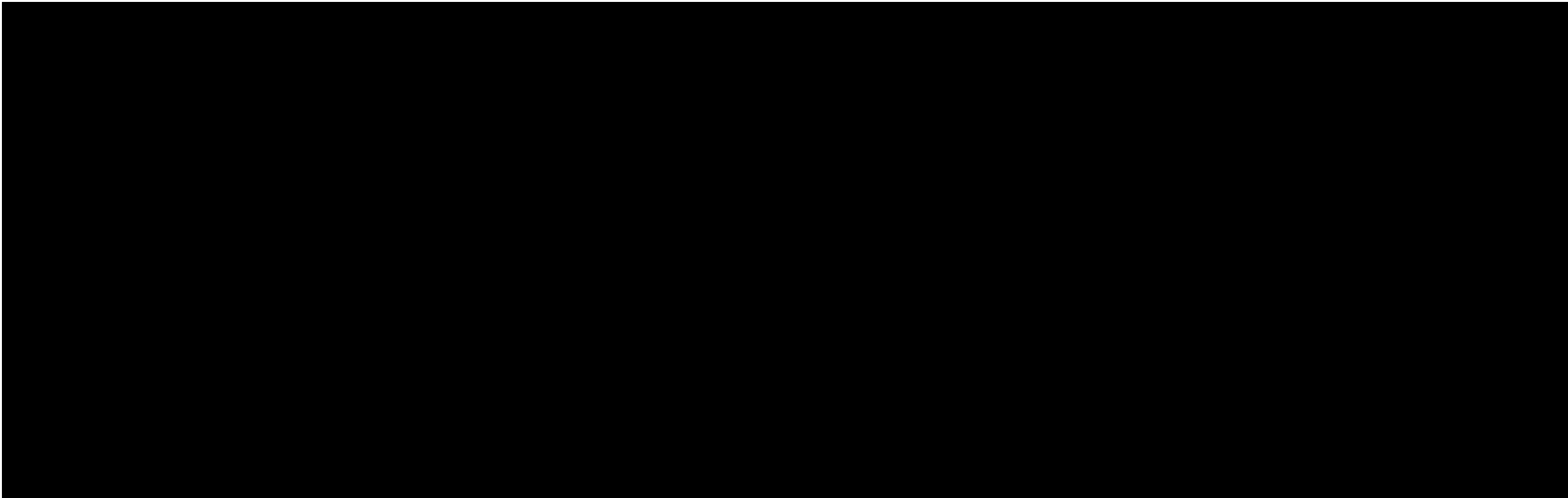


Source: UC\_STRAW2\_00058007  
CONTAINS ATTORNEYS EYES ONLY INFORMATION

**California Berry Cultivars vs. University of California**  
**Exhibit 6: Strawberry Cultivar Unit Sales Analysis**  
Cultivar Average Projections - United States

Average Unit Sales 29,471,991

Camino Real      Ventana      Albion      Palomar      Monterey      San Andreas      Portola      Benicia      Mojave



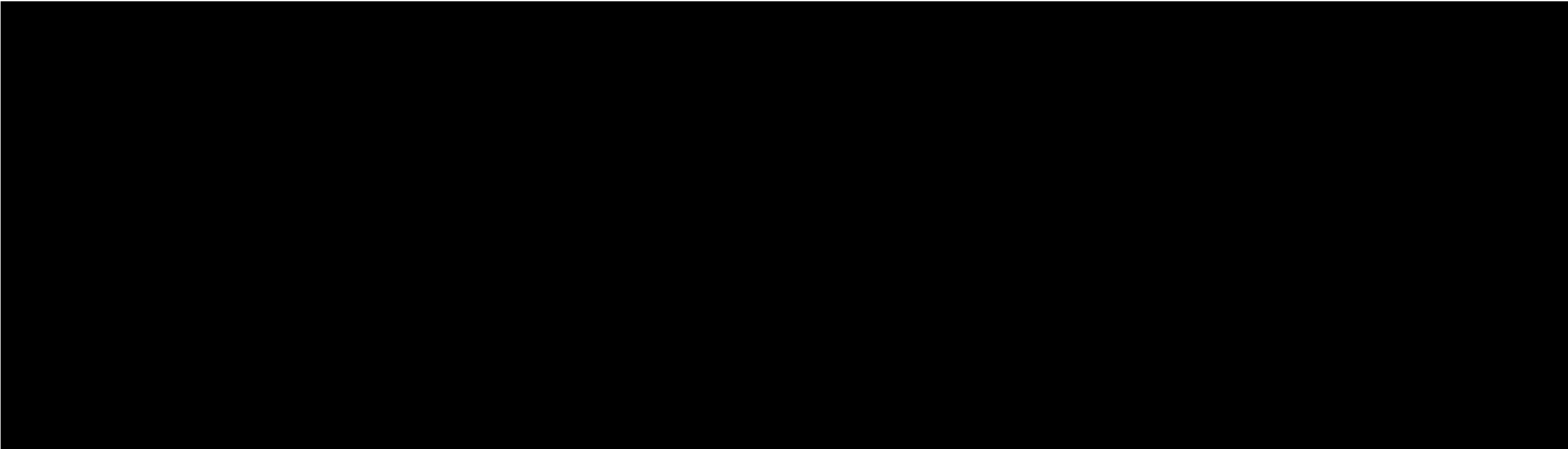
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Source: UC\_STRAW2\_00058007  
CONTAINS ATTORNEYS EYES ONLY INFORMATION

**California Berry Cultivars vs. University of California**  
**Exhibit 6: Strawberry Cultivar Unit Sales Analysis**  
Cultivar Average Projections - International

Average Unit Sales 457,812,422

Camino Real      Ventana      Albion      Palomar      Monterey      San Andreas      Portola      Benicia      Mojave



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Source: UC\_STRAW2\_00058007  
CONTAINS ATTORNEYS EYES ONLY INFORMATION

California Berry Cultivars vs. University of California  
Exhibit 7: Projections versus Actual Royalties  
2014 - 2016

A





**California Berry Cultivars vs. University of California**  
**Exhibit 8: Lost Revenue Model**  
Alternate Trend Analysis Projections

Net Discount Rate 11% [2]  
Years of Delay 4 Years

		<i>A</i>	<i>B</i>			<i>C</i>	<i>D = sum B:C</i>	<i>E = A * D</i>
Year	Years Discounted	PV Factor [1]	Cultivar#1	Cultivar#2	Cultivar#3	Cultivar#4	Subtotal	Present Value
2015	0	1	\$ 83,000				\$ 83,000	\$ 83,000
2016	0	1	257,000	\$ 83,000			340,000	340,000
2017	0.5	0.95	746,000	257,000	\$ 83,000		1,086,000	1,030,786
2018	1.5	0.86	1,156,000	746,000	257,000	\$ 83,000	2,242,000	1,917,128
2019	2.5	0.77	1,378,000	1,156,000	746,000	257,000	3,537,000	2,724,756
2020	3.5	0.69	1,486,000	1,378,000	1,156,000	746,000	4,766,000	3,307,681
2021	4.5	0.63	1,425,000	1,486,000	1,378,000	1,156,000	5,445,000	3,404,431
2022	5.5	0.56	1,651,000	1,425,000	1,486,000	1,378,000	5,940,000	3,345,878
2023	6.5	0.51	1,469,000	1,651,000	1,425,000	1,486,000	6,031,000	3,060,483
2024	7.5	0.46	1,264,000	1,469,000	1,651,000	1,425,000	5,809,000	2,655,700
2025	8.5	0.41	1,130,000	1,264,000	1,469,000	1,651,000	5,514,000	2,271,023
2026	9.5	0.37	967,000	1,130,000	1,264,000	1,469,000	4,830,000	1,792,168
2027	10.5	0.33	829,000	967,000	1,130,000	1,264,000	4,190,000	1,400,628
2028	11.5	0.30	708,000	829,000	967,000	1,130,000	3,634,000	1,094,386
2029	12.5	0.27	516,000	708,000	829,000	967,000	3,020,000	819,350
2030	13.5	0.24	416,000	516,000	708,000	829,000	2,469,000	603,477
2031	14.5	0.22	374,000	416,000	516,000	708,000	2,014,000	443,482
2032	15.5	0.20	294,000	374,000	416,000	516,000	1,600,000	317,405
2033	16.5	0.18	283,000	294,000	374,000	416,000	1,367,000	244,309
2034	17.5	0.16	187,000	283,000	294,000	374,000	1,138,000	183,227
2035	18.5	0.15	175,000	187,000	283,000	294,000	939,000	136,204
2036	19.5	0.13		175,000	187,000	283,000	645,000	84,287
2037	20.5	0.12			175,000	187,000	362,000	42,617
2038	21.5	0.11				175,000	175,000	18,561
Notes:							\$ 67,176,000	\$ 31,320,968
[1] Uses mid-year convention								53%
[2] 15% discount rate less assumed 4% long-term growth rate								

**California Berry Cultivars vs. University of California**  
**Exhibit 8: Lost Revenue Model**  
Alternate Trend Analysis Projections

Net Discount Rate 11% [2]  
Years of Delay 5 Years

		<i>A</i>	<i>B</i>						<i>C</i>	<i>D = sum B:C</i>	<i>E = A * D</i>
Year	Years Discounted	PV Factor [1]	Cultivar#1	Cultivar#2	Cultivar#3	Cultivar#4	Cultivar#5	Subtotal	Present Value		
2016	0	1	\$ 83,000					\$ 83,000	\$ 83,000		
2017	0.5	0.95	257,000	\$ 83,000				340,000	322,714		
2018	1.5	0.86	746,000	257,000	\$ 83,000			1,086,000	928,636		
2019	2.5	0.77	1,156,000	746,000	257,000	\$ 83,000		2,242,000	1,727,142		
2020	3.5	0.69	1,378,000	1,156,000	746,000	257,000	\$ 83,000	3,620,000	2,512,338		
2021	4.5	0.63	1,486,000	1,378,000	1,156,000	746,000	257,000	5,023,000	3,140,579		
2022	5.5	0.56	1,425,000	1,486,000	1,378,000	1,156,000	746,000	6,191,000	3,487,261		
2023	6.5	0.51	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	7,096,000	3,600,926		
2024	7.5	0.46	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	7,409,000	3,387,172		
2025	8.5	0.41	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	7,295,000	3,004,554		
2026	9.5	0.37	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	6,939,000	2,574,712		
2027	10.5	0.33	967,000	1,130,000	1,264,000	1,469,000	1,651,000	6,481,000	2,166,460		
2028	11.5	0.30	829,000	967,000	1,130,000	1,264,000	1,469,000	5,659,000	1,704,219		
2029	12.5	0.27	708,000	829,000	967,000	1,130,000	1,264,000	4,898,000	1,328,867		
2030	13.5	0.24	516,000	708,000	829,000	967,000	1,130,000	4,150,000	1,014,350		
2031	14.5	0.22	416,000	516,000	708,000	829,000	967,000	3,436,000	756,606		
2032	15.5	0.20	374,000	416,000	516,000	708,000	829,000	2,843,000	563,989		
2033	16.5	0.18	294,000	374,000	416,000	516,000	708,000	2,308,000	412,484		
2034	17.5	0.16	283,000	294,000	374,000	416,000	516,000	1,883,000	303,178		
2035	18.5	0.15	187,000	283,000	294,000	374,000	416,000	1,554,000	225,411		
2036	19.5	0.13	175,000	187,000	283,000	294,000	374,000	1,313,000	171,580		
2037	20.5	0.12		175,000	187,000	283,000	294,000	939,000	110,546		
2038	21.5	0.11			175,000	187,000	283,000	645,000	68,409		
2039	22.5	0.10				175,000	187,000	362,000	34,589		
2040	23.5	0.09					175,000	175,000	15,064		
								<u>\$ 83,970,000</u>	<u>\$ 33,644,789</u>		

Notes:

[1] Uses mid-year convention  
[2] 15% discount rate less assumed 4% long-term growth rate

60%

California Berry Cultivars vs. University of California

Exhibit 8: Lost Revenue Model

Alternate Trend Analysis Projections

Net Discount Rate 11% [2]  
Years of Delay 6 Years

		<i>A</i>	<i>B</i>							<i>C</i>	<i>D = sum B:C</i>	<i>E = A * D</i>
Year	Years Discounted	PV Factor [1]	Cultivar#1	Cultivar#2	Cultivar#3	Cultivar#4	Cultivar#5	Cultivar#6	Subtotal	Present Value		
2017	0.5	0.95	\$ 83,000						\$ 83,000	\$ 78,780		
2018	1.5	0.86	257,000	\$ 83,000					340,000	290,733		
2019	2.5	0.77	746,000	257,000	\$ 83,000				1,086,000	836,609		
2020	3.5	0.69	1,156,000	746,000	257,000	\$ 83,000			2,242,000	1,555,984		
2021	4.5	0.63	1,378,000	1,156,000	746,000	257,000	\$ 83,000		3,620,000	2,263,368		
2022	5.5	0.56	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000	5,106,000	2,876,103		
2023	6.5	0.51	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	6,448,000	3,272,093		
2024	7.5	0.46	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	7,842,000	3,585,127		
2025	8.5	0.41	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	8,565,000	3,527,622		
2026	9.5	0.37	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	8,673,000	3,218,111		
2027	10.5	0.33	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	8,425,000	2,816,298		
2028	11.5	0.30	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	7,906,000	2,380,908		
2029	12.5	0.27	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	7,310,000	1,983,262		
2030	13.5	0.24	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	6,367,000	1,556,233		
2031	14.5	0.22	516,000	708,000	829,000	967,000	1,130,000	1,264,000	5,414,000	1,192,161		
2032	15.5	0.20	416,000	516,000	708,000	829,000	967,000	1,130,000	4,566,000	905,795		
2033	16.5	0.18	374,000	416,000	516,000	708,000	829,000	967,000	3,810,000	680,920		
2034	17.5	0.16	294,000	374,000	416,000	516,000	708,000	829,000	3,137,000	505,083		
2035	18.5	0.15	283,000	294,000	374,000	416,000	516,000	708,000	2,591,000	375,831		
2036	19.5	0.13	187,000	283,000	294,000	374,000	416,000	516,000	2,070,000	270,503		
2037	20.5	0.12	175,000	187,000	283,000	294,000	374,000	416,000	1,729,000	203,551		
2038	21.5	0.11		175,000	187,000	283,000	294,000	374,000	1,313,000	139,258		
2039	22.5	0.10			175,000	187,000	283,000	294,000	939,000	89,722		
2040	23.5	0.09				175,000	187,000	283,000	645,000	55,523		
2041	24.5	0.08					175,000	187,000	362,000	28,073		
2042	25.5	0.07						175,000	175,000	12,226		
Notes:									\$ 100,764,000	\$ 34,699,877		
											66%	

[1] Uses mid-year convention

[2] 15% discount rate less assumed 4% long-term growth rate

California Berry Cultivars vs. University of California

Exhibit 8: Lost Revenue Model

Alternate Trend Analysis Projections

Net Discount Rate		11% [2]											
Years of Delay		7 Years											
		A		B						C	D = sum B:C	E = A * D	
Years													
Year	Discounted	PV Factor [1]	Cultivar#1	Cultivar#2	Cultivar#3	Cultivar#4	Cultivar#5	Cultivar#6	Cultivar#7	Subtotal	Present Value		
2018	1.5	0.86	\$ 83,000							\$ 83,000	\$ 70,973		
2019	2.5	0.77	257,000	\$ 83,000						340,000	261,922		
2020	3.5	0.69	746,000	257,000	\$ 83,000					1,086,000	753,702		
2021	4.5	0.63	1,156,000	746,000	257,000	\$ 83,000				2,242,000	1,401,788		
2022	5.5	0.56	1,378,000	1,156,000	746,000	257,000	\$ 83,000			3,620,000	2,039,070		
2023	6.5	0.51	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000		5,106,000	2,591,084		
2024	7.5	0.46	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000	6,531,000	2,985,777		
2025	8.5	0.41	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	8,099,000	3,335,693		
2026	9.5	0.37	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	9,311,000	3,454,841		
2027	10.5	0.33	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	9,829,000	3,285,625		
2028	11.5	0.30	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	9,803,000	2,952,193		
2029	12.5	0.27	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	9,392,000	2,548,126		
2030	13.5	0.24	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	8,735,000	2,135,024		
2031	14.5	0.22	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	8,018,000	1,765,562		
2032	15.5	0.20	516,000	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	6,883,000	1,365,437		
2033	16.5	0.18	416,000	516,000	708,000	829,000	967,000	1,130,000	1,264,000	5,830,000	1,041,932		
2034	17.5	0.16	374,000	416,000	516,000	708,000	829,000	967,000	1,130,000	4,940,000	795,380		
2035	18.5	0.15	294,000	374,000	416,000	516,000	708,000	829,000	967,000	4,104,000	595,295		
2036	19.5	0.13	283,000	294,000	374,000	416,000	516,000	708,000	829,000	3,420,000	446,918		
2037	20.5	0.12	187,000	283,000	294,000	374,000	416,000	516,000	708,000	2,778,000	327,048		
2038	21.5	0.11	175,000	187,000	283,000	294,000	374,000	416,000	516,000	2,245,000	238,107		
2039	22.5	0.10		175,000	187,000	283,000	294,000	374,000	416,000	1,729,000	165,207		
2040	23.5	0.09			175,000	187,000	283,000	294,000	374,000	1,313,000	113,025		
2041	24.5	0.08				175,000	187,000	283,000	294,000	939,000	72,820		
2042	25.5	0.07					175,000	187,000	283,000	645,000	45,063		
2043	26.5	0.06						175,000	187,000	362,000	22,785		
2044	27.5	0.06							175,000	175,000	9,923		
Notes:										\$ 117,558,000	\$ 34,820,319		
[1] Uses mid-year convention											70%		

California Berry Cultivars vs. University of California

Exhibit 8: Lost Revenue Model

Alternate Trend Analysis Projections

Net Discount Rate 8% [2]  
Years of Delay 4 Years

		<i>A</i>	<i>B</i>			<i>C</i>	<i>D = sum B:C</i>	<i>E = A * D</i>
Years								
Year	Discounted	PV Factor [1]	Cultivar#1	Cultivar#2	Cultivar#3	Cultivar#4	Subtotal	Present Value
2015	0	1	\$ 83,000				\$ 83,000	\$ 83,000
2016	0	1	257,000	\$ 83,000			340,000	340,000
2017	0.5	0.96	746,000	257,000	\$ 83,000		1,086,000	1,045,004
2018	1.5	0.89	1,156,000	746,000	257,000	\$ 83,000	2,242,000	1,997,561
2019	2.5	0.82	1,378,000	1,156,000	746,000	257,000	3,537,000	2,917,935
2020	3.5	0.76	1,486,000	1,378,000	1,156,000	746,000	4,766,000	3,640,583
2021	4.5	0.71	1,425,000	1,486,000	1,378,000	1,156,000	5,445,000	3,851,155
2022	5.5	0.65	1,651,000	1,425,000	1,486,000	1,378,000	5,940,000	3,890,055
2023	6.5	0.61	1,469,000	1,651,000	1,425,000	1,486,000	6,031,000	3,657,084
2024	7.5	0.56	1,264,000	1,469,000	1,651,000	1,425,000	5,809,000	3,261,544
2025	8.5	0.52	1,130,000	1,264,000	1,469,000	1,651,000	5,514,000	2,866,585
2026	9.5	0.48	967,000	1,130,000	1,264,000	1,469,000	4,830,000	2,324,992
2027	10.5	0.45	829,000	967,000	1,130,000	1,264,000	4,190,000	1,867,517
2028	11.5	0.41	708,000	829,000	967,000	1,130,000	3,634,000	1,499,725
2029	12.5	0.38	516,000	708,000	829,000	967,000	3,020,000	1,154,011
2030	13.5	0.35	416,000	516,000	708,000	829,000	2,469,000	873,575
2031	14.5	0.33	374,000	416,000	516,000	708,000	2,014,000	659,804
2032	15.5	0.30	294,000	374,000	416,000	516,000	1,600,000	485,346
2033	16.5	0.28	283,000	294,000	374,000	416,000	1,367,000	383,952
2034	17.5	0.26	187,000	283,000	294,000	374,000	1,138,000	295,956
2035	18.5	0.24	175,000	187,000	283,000	294,000	939,000	226,113
2036	19.5	0.22		175,000	187,000	283,000	645,000	143,812
2037	20.5	0.21			175,000	187,000	362,000	74,735
2038	21.5	0.19				175,000	175,000	33,452
Notes:							\$ 67,176,000	\$ 37,573,497

[1] Uses mid-year convention

[2] 12% discount rate less assumed 4% long-term growth rate

44%

California Berry Cultivars vs. University of California

Exhibit 8: Lost Revenue Model

Alternate Trend Analysis Projections

Net Discount Rate 8% [2]  
Years of Delay 5 Years

		<i>A</i>	<i>B</i>						<i>C</i>	<i>D = sum B:C</i>	<i>E = A * D</i>
Year	Years Discounted	PV Factor [1]	Cultivar#1	Cultivar#2	Cultivar#3	Cultivar#4	Cultivar#5	Subtotal	Present Value		
2016	0	1	\$ 83,000					\$ 83,000	\$ 83,000		
2017	0.5	0.96	257,000	\$ 83,000				340,000	327,165		
2018	1.5	0.89	746,000	257,000	\$ 83,000			1,086,000	967,596		
2019	2.5	0.82	1,156,000	746,000	257,000	\$ 83,000		2,242,000	1,849,593		
2020	3.5	0.76	1,378,000	1,156,000	746,000	257,000	\$ 83,000	3,620,000	2,765,193		
2021	4.5	0.71	1,486,000	1,378,000	1,156,000	746,000	257,000	5,023,000	3,552,682		
2022	5.5	0.65	1,425,000	1,486,000	1,378,000	1,156,000	746,000	6,191,000	4,054,433		
2023	6.5	0.61	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	7,096,000	4,302,880		
2024	7.5	0.56	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	7,409,000	4,159,886		
2025	8.5	0.52	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	7,295,000	3,792,481		
2026	9.5	0.48	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	6,939,000	3,340,190		
2027	10.5	0.45	967,000	1,130,000	1,264,000	1,469,000	1,651,000	6,481,000	2,888,634		
2028	11.5	0.41	829,000	967,000	1,130,000	1,264,000	1,469,000	5,659,000	2,335,428		
2029	12.5	0.38	708,000	829,000	967,000	1,130,000	1,264,000	4,898,000	1,871,638		
2030	13.5	0.35	516,000	708,000	829,000	967,000	1,130,000	4,150,000	1,468,343		
2031	14.5	0.33	416,000	516,000	708,000	829,000	967,000	3,436,000	1,125,664		
2032	15.5	0.30	374,000	416,000	516,000	708,000	829,000	2,843,000	862,400		
2033	16.5	0.28	294,000	374,000	416,000	516,000	708,000	2,308,000	648,252		
2034	17.5	0.26	283,000	294,000	374,000	416,000	516,000	1,883,000	489,705		
2035	18.5	0.24	187,000	283,000	294,000	374,000	416,000	1,554,000	374,207		
2036	19.5	0.22	175,000	187,000	283,000	294,000	374,000	1,313,000	292,753		
2037	20.5	0.21		175,000	187,000	283,000	294,000	939,000	193,856		
2038	21.5	0.19			175,000	187,000	283,000	645,000	123,296		
2039	22.5	0.18				175,000	187,000	362,000	64,073		
2040	23.5	0.16					175,000	175,000	28,680		
								<u>\$ 83,970,000</u>	<u>\$ 41,962,027</u>		

Notes:

- [1] Uses mid-year convention  
[2] 12% discount rate less assumed 4% long-term growth rate

50%

California Berry Cultivars vs. University of California

Exhibit 8: Lost Revenue Model

Alternate Trend Analysis Projections

Net Discount Rate 8% [2]  
Years of Delay 6 Years

		<i>A</i>	<i>B</i>							<i>C</i>	<i>D = sum B:C</i>	<i>E = A * D</i>
Year	Years Discounted	PV Factor [1]	Cultivar#1	Cultivar#2	Cultivar#3	Cultivar#4	Cultivar#5	Cultivar#6	Subtotal	Present Value		
2017	0.5	0.96	\$ 83,000						\$ 83,000	\$ 79,867		
2018	1.5	0.89	257,000	\$ 83,000					340,000	302,931		
2019	2.5	0.82	746,000	257,000	\$ 83,000				1,086,000	895,922		
2020	3.5	0.76	1,156,000	746,000	257,000	\$ 83,000			2,242,000	1,712,586		
2021	4.5	0.71	1,378,000	1,156,000	746,000	257,000	\$ 83,000		3,620,000	2,560,364		
2022	5.5	0.65	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000	5,106,000	3,343,876		
2023	6.5	0.61	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	6,448,000	3,909,945		
2024	7.5	0.56	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	7,842,000	4,403,000		
2025	8.5	0.52	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	8,565,000	4,452,721		
2026	9.5	0.48	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	8,673,000	4,174,877		
2027	10.5	0.45	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	8,425,000	3,755,091		
2028	11.5	0.41	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	7,906,000	3,262,749		
2029	12.5	0.38	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	7,310,000	2,793,318		
2030	13.5	0.35	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	6,367,000	2,252,756		
2031	14.5	0.33	516,000	708,000	829,000	967,000	1,130,000	1,264,000	5,414,000	1,773,674		
2032	15.5	0.30	416,000	516,000	708,000	829,000	967,000	1,130,000	4,566,000	1,385,057		
2033	16.5	0.28	374,000	416,000	516,000	708,000	829,000	967,000	3,810,000	1,070,121		
2034	17.5	0.26	294,000	374,000	416,000	516,000	708,000	829,000	3,137,000	815,828		
2035	18.5	0.24	283,000	294,000	374,000	416,000	516,000	708,000	2,591,000	623,919		
2036	19.5	0.22	187,000	283,000	294,000	374,000	416,000	516,000	2,070,000	461,538		
2037	20.5	0.21	175,000	187,000	283,000	294,000	374,000	416,000	1,729,000	356,951		
2038	21.5	0.19		175,000	187,000	283,000	294,000	374,000	1,313,000	250,989		
2039	22.5	0.18			175,000	187,000	283,000	294,000	939,000	166,200		
2040	23.5	0.16				175,000	187,000	283,000	645,000	105,706		
2041	24.5	0.15					175,000	187,000	362,000	54,932		
2042	25.5	0.14						175,000	175,000	24,589		
Notes:									\$ 100,764,000	\$ 44,989,505		
											55%	

[1] Uses mid-year convention

[2] 12% discount rate less assumed 4% long-term growth rate



California Berry Cultivars vs. University of California

Exhibit 8: Lost Revenue Model

Alternate Trend Analysis Projections

Net Discount Rate8% [2]  
Years of Delay7 Years

		A	B								C	D = sum B:C	E = A * D
Year	Years Discounted	PV Factor [1]	Cultivar#1	Cultivar#2	Cultivar#3	Cultivar#4	Cultivar#5	Cultivar#6	Cultivar#7	Subtotal	Present Value		
2018	1.5	0.89	\$ 83,000							\$ 83,000	\$ 73,951		
2019	2.5	0.82	257,000	\$ 83,000						340,000	280,491		
2020	3.5	0.76	746,000	257,000	\$ 83,000					1,086,000	829,558		
2021	4.5	0.71	1,156,000	746,000	257,000	\$ 83,000				2,242,000	1,585,728		
2022	5.5	0.65	1,378,000	1,156,000	746,000	257,000	\$ 83,000			3,620,000	2,370,707		
2023	6.5	0.61	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000		5,106,000	3,096,181		
2024	7.5	0.56	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000	6,531,000	3,666,921		
2025	8.5	0.52	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	8,099,000	4,210,459		
2026	9.5	0.48	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	9,311,000	4,481,988		
2027	10.5	0.45	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	9,829,000	4,380,865		
2028	11.5	0.41	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	9,803,000	4,045,627		
2029	12.5	0.38	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	9,392,000	3,588,898		
2030	13.5	0.35	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	8,735,000	3,090,596		
2031	14.5	0.33	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	8,018,000	2,626,767		
2032	15.5	0.30	516,000	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	6,883,000	2,087,899		
2033	16.5	0.28	416,000	516,000	708,000	829,000	967,000	1,130,000	1,264,000	5,830,000	1,637,482		
2034	17.5	0.26	374,000	416,000	516,000	708,000	829,000	967,000	1,130,000	4,940,000	1,284,728		
2035	18.5	0.24	294,000	374,000	416,000	516,000	708,000	829,000	967,000	4,104,000	988,252		
2036	19.5	0.22	283,000	294,000	374,000	416,000	516,000	708,000	829,000	3,420,000	762,540		
2037	20.5	0.21	187,000	283,000	294,000	374,000	416,000	516,000	708,000	2,778,000	573,516		
2038	21.5	0.19	175,000	187,000	283,000	294,000	374,000	416,000	516,000	2,245,000	429,147		
2039	22.5	0.18		175,000	187,000	283,000	294,000	374,000	416,000	1,729,000	306,028		
2040	23.5	0.16			175,000	187,000	283,000	294,000	374,000	1,313,000	215,182		
2041	24.5	0.15				175,000	187,000	283,000	294,000	939,000	142,490		
2042	25.5	0.14					175,000	187,000	283,000	645,000	90,626		
2043	26.5	0.13						175,000	187,000	362,000	47,095		
2044	27.5	0.12							175,000	175,000	21,081		
Notes:										\$ 117,558,000	\$ 46,914,804		
[1] Uses mid-year convention											60%		
[2] 12% discount rate less assumed 4% long-term growth rate													



California Berry Cultivars vs. University of California

Exhibit 8: Lost Revenue Model

Alternate Trend Analysis Projections

Net Discount Rate 3.5% [2]  
Years of Delay 8 Years

		<i>A</i>	<i>B</i>									<i>C</i>	<i>D = sum B:C</i>	<i>E = A * D</i>
Years														
Year	Discounted	PV Factor [1]	Cultivar#1	Cultivar#2	Cultivar#3	Cultivar#4	Cultivar#5	Cultivar#6	Cultivar#7	Cultivar#8	Subtotal	Present Value		
2019	2.5	0.92	\$ 83,000								\$ 83,000	\$ 76,160		
2020	3.5	0.89	257,000	\$ 83,000							340,000	301,431		
2021	4.5	0.86	746,000	257,000	\$ 83,000						1,086,000	930,247		
2022	5.5	0.83	1,156,000	746,000	257,000	\$ 83,000					2,242,000	1,855,512		
2023	6.5	0.80	1,378,000	1,156,000	746,000	257,000	\$ 83,000				3,620,000	2,894,652		
2024	7.5	0.77	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000			5,106,000	3,944,829		
2025	8.5	0.75	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000		6,531,000	4,875,136		
2026	9.5	0.72	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000	8,182,000	5,901,007		
2027	10.5	0.70	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	9,568,000	6,667,262		
2028	11.5	0.67	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	10,575,000	7,119,776		
2029	12.5	0.65	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	10,959,000	7,128,802		
2030	13.5	0.63	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	10,770,000	6,768,945		
2031	14.5	0.61	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	10,221,000	6,206,665		
2032	15.5	0.59	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	9,443,000	5,540,316		
2033	16.5	0.57	516,000	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	8,534,000	4,837,677		
2034	17.5	0.55	416,000	516,000	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	7,299,000	3,997,673		
2035	18.5	0.53	374,000	416,000	516,000	708,000	829,000	967,000	1,130,000	1,264,000	6,204,000	3,283,034		
2036	19.5	0.51	294,000	374,000	416,000	516,000	708,000	829,000	967,000	1,130,000	5,234,000	2,676,066		
2037	20.5	0.49	283,000	294,000	374,000	416,000	516,000	708,000	829,000	967,000	4,387,000	2,167,157		
2038	21.5	0.48	187,000	283,000	294,000	374,000	416,000	516,000	708,000	829,000	3,607,000	1,721,586		
2039	22.5	0.46	175,000	187,000	283,000	294,000	374,000	416,000	516,000	708,000	2,953,000	1,361,776		
2040	23.5	0.45		175,000	187,000	283,000	294,000	374,000	416,000	516,000	2,245,000	1,000,272		
2041	24.5	0.43			175,000	187,000	283,000	294,000	374,000	416,000	1,729,000	744,314		
2042	25.5	0.42				175,000	187,000	283,000	294,000	374,000	1,313,000	546,117		
2043	26.5	0.40					175,000	187,000	283,000	294,000	939,000	377,352		
2044	27.5	0.39						175,000	187,000	283,000	645,000	250,438		
2045	28.5	0.38							175,000	187,000	362,000	135,803		
2046	29.5	0.36								175,000	175,000	63,430		
Notes:												\$ 134,352,000	\$ 83,373,435	38%

[1] Uses mid-year convention

[2] 7.5% discount rate less assumed 4% long-term growth rate

California Berry Cultivars vs. University of California

Exhibit 8: Lost Revenue Model

Alternate Trend Analysis Projections

Net Discount Rate 16% [2]  
Years of Delay 8 Years

		<i>A</i>	<i>B</i>									<i>C</i>	<i>D = sum B:C</i>	<i>E = A * D</i>
Years														
Year	Discounted	PV Factor [1]	Cultivar#1	Cultivar#2	Cultivar#3	Cultivar#4	Cultivar#5	Cultivar#6	Cultivar#7	Cultivar#8	Subtotal	Present Value		
2019	2.5	0.69	\$ 83,000								\$ 83,000	\$ 57,271		
2020	3.5	0.59	257,000	\$ 83,000							340,000	202,244		
2021	4.5	0.51	746,000	257,000	\$ 83,000						1,086,000	556,889		
2022	5.5	0.44	1,156,000	746,000	257,000	\$ 83,000					2,242,000	991,098		
2023	6.5	0.38	1,378,000	1,156,000	746,000	257,000	\$ 83,000				3,620,000	1,379,532		
2024	7.5	0.33	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000			5,106,000	1,677,436		
2025	8.5	0.28	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000		6,531,000	1,849,638		
2026	9.5	0.24	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000	8,182,000	1,997,600		
2027	10.5	0.21	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	9,568,000	2,013,781		
2028	11.5	0.18	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	10,575,000	1,918,728		
2029	12.5	0.16	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	10,959,000	1,714,139		
2030	13.5	0.13	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	10,770,000	1,452,221		
2031	14.5	0.12	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	10,221,000	1,188,099		
2032	15.5	0.10	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	9,443,000	946,261		
2033	16.5	0.09	516,000	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	8,534,000	737,218		
2034	17.5	0.07	416,000	516,000	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	7,299,000	543,561		
2035	18.5	0.06	374,000	416,000	516,000	708,000	829,000	967,000	1,130,000	1,264,000	6,204,000	398,290		
2036	19.5	0.06	294,000	374,000	416,000	516,000	708,000	829,000	967,000	1,130,000	5,234,000	289,670		
2037	20.5	0.05	283,000	294,000	374,000	416,000	516,000	708,000	829,000	967,000	4,387,000	209,305		
2038	21.5	0.04	187,000	283,000	294,000	374,000	416,000	516,000	708,000	829,000	3,607,000	148,354		
2039	22.5	0.04	175,000	187,000	283,000	294,000	374,000	416,000	516,000	708,000	2,953,000	104,703		
2040	23.5	0.03		175,000	187,000	283,000	294,000	374,000	416,000	516,000	2,245,000	68,620		
2041	24.5	0.03			175,000	187,000	283,000	294,000	374,000	416,000	1,729,000	45,559		
2042	25.5	0.02				175,000	187,000	283,000	294,000	374,000	1,313,000	29,825		
2043	26.5	0.02					175,000	187,000	283,000	294,000	939,000	18,388		
2044	27.5	0.02						175,000	187,000	283,000	645,000	10,888		
2045	28.5	0.01							175,000	187,000	362,000	5,268		
2046	29.5	0.01								175,000	175,000	2,195		
Notes:											\$ 134,352,000	\$ 20,556,783		
													85%	

[1] Uses mid-year convention

[2] 20% discount rate less assumed 4% long-term growth rate

# EXHIBIT B

Highly Confidential – Attorneys' Eyes Only  
Mary Delany – December 9, 2016

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

CALIFORNIA BERRY CULTIVARS, LLC,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No. 3:16-cv-02477
	)	VC
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,	)	
	)	
Defendant.	)	
	)	
and Related Claims.	)	
	)	

HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF MARY DELANY  
San Francisco, California  
Friday, December 9, 2016  
Volume I

REPORTED BY:  
REBECCA L. ROMANO, RPR, CSR No. 12546

Highly Confidential – Attorneys' Eyes Only  
Mary Delany – December 9, 2016

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UNITED STATES DISTRICT COURT		
NORTHERN DISTRICT OF CALIFORNIA		
SAN FRANCISCO DIVISION		
CALIFORNIA BERRY CULTIVARS,	)	
LLC,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No. 3:16-cv-02477
	)	VC
THE REGENTS OF THE UNIVERSITY	)	
OF CALIFORNIA,	)	
	)	
Defendant.	)	
	)	
	)	
and Related Claims.	)	
	)	

VIDEOTAPED DEPOSITION OF MARY DELANY,  
taken on behalf of the Plaintiff and  
Counterclaim-Defendant, at Morrison & Foerster,  
LLP, 425 Market Street, San Francisco, California,  
commencing at 9:04 a.m., Friday, December 9, 2016  
before Rebecca L. Romano, Certified Shorthand  
Reporter No. 12546

Highly Confidential – Attorneys' Eyes Only  
Mary Delany – December 9, 2016

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1       became aware -- yeah, the -- yes.

2           Q.    Did you also learn that the process of  
3       moving from that initial cross-breeding activity to  
4       the release of a new, valuable patentable cultivar  
5       was a process that took somewhere between five,  
6       seven, eight years, something like that?

7           A.    Yes.

8           Q.    And did you also learn that as a part of  
9       that process, the breeder would start with a large  
10      number of plants and, each year, reduce that number  
11      down until they found a variety that they believed  
12      was valuable and patentable?

13          A.    Yeah.

14               MS. KREVANS: Same scope objection.

15          Q.    (By Mr. Lippetz) And, again, these are  
16      all in your individual capacity --

17          A.    Right.

18          Q.    -- to avoid objections.

19               MS. KREVANS: Okay. Great.

20          Q.    (By Mr. Lippetz) When I say "you," for  
21      these -- purposes of these questions, I mean --

22          A.    Mary Delany, right.

23          Q.    Now, I'm going to try this as a  
24      university representative, but see where it goes.

25               Did the university -- does the university



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Mary Delany - December 9, 2016

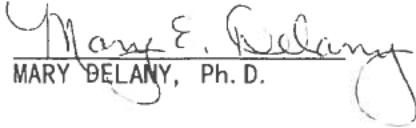
Page 333

DEPOSITION ERRATA SHEET	
1	
2	Case Name: California Berry Cultivars, LLC v. The Regents of the University of California
3	Name of Witness: Mary Delany, Ph.D.
4	Date of Deposition: December 9, 2016
5	Job No.: 120916-RRD
6	Reason Codes: 1. To clarify the record. 2. To conform to the facts. 3. To Correct transcript errors.
7	Page <u>55</u> Line <u>5</u> Reason <u>(3)</u>
8	From <u>SITTING</u> to <u>SIFTING</u>
9	Page <u>165</u> Line <u>21</u> Reason <u>(3)</u>
10	From <u>the VIDEOPHOTOGRAPHER</u> to <u>the DEPONENT</u>
11	Page <u>235</u> Line <u>7</u> Reason <u>(3)</u>
12	From <u>THE VIDEOPHOTOGRAPHER</u> to <u>the DEPONENT</u>
13	Page <u>245</u> Line <u>12</u> Reason <u>(3)</u>
14	From <u>SITTING</u> to <u>SIFTING</u>
15	Page <u>322</u> Line <u>14</u> Reason <u>(3)</u>
16	From <u>forward</u> to <u>Board</u>
17	Page <u>    </u> Line <u>    </u> Reason <u>    </u>
18	From <u>    </u> to <u>    </u>
19	Page <u>    </u> Line <u>    </u> Reason <u>    </u>
20	From <u>    </u> to <u>    </u>
21	Page <u>    </u> Line <u>    </u> Reason <u>    </u>
22	From <u>    </u> to <u>    </u>
23	Page <u>    </u> Line <u>    </u> Reason <u>    </u>
24	From <u>    </u> to <u>    </u>
25	Page <u>    </u> Line <u>    </u> Reason <u>    </u>
	From <u>    </u> to <u>    </u>



Highly Confidential - Attorneys' Eyes Only  
Mary Delany - December 9, 2016

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1	DEPOSITION ERRATA SHEET		
2	Page _____	Line _____	Reason _____
3	From _____	to _____	
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18	Page _____	Line _____	Reason _____
19	From _____	to _____	
20	Page _____	Line _____	Reason _____
21	From _____	to _____	
22	<input checked="" type="checkbox"/> Subject to the above changes, I certify that the transcript is true and correct		
23	<input type="checkbox"/> No changes have been made. I certify that the transcript is true and correct.		
24	 MARY DELANY, Ph.D.		
25			

# EXHIBIT C

REDACTED  
VERSION  
OF DOCUMENT  
SOUGHT TO BE  
SEALED

# EXHIBIT D

Highly Confidential – Attorneys' Eyes Only  
Steven Knapp Ph.D. – December 16, 2016

Page 1

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

CALIFORNIA BERRY CULTIVARS,  
LLC,

Plaintiffs,

vs.

THE REGENTS OF THE UNIVERSITY  
OF CALIFORNIA,

Defendant.

and Related Claims.

Case No. 3:16-cv-02477  
VC

HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY

VIDEO DEPOSITION OF STEVEN J. KNAPP, Ph.D.

San Francisco, California

Friday, December 16, 2016

Volume I

REPORTED BY:

REBECCA L. ROMANO, RPR, CSR No. 12546

Highly Confidential – Attorneys' Eyes Only  
Steven Knapp Ph.D. – December 16, 2016

Page 2

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

CALIFORNIA BERRY CULTIVARS,  
LLC,

Plaintiffs,

vs.

THE REGENTS OF THE UNIVERSITY  
OF CALIFORNIA,

Defendant.

and Related Claims.

Case No. 3:16-cv-02477  
VC

DEPOSITION OF STEVEN J. KNAPP, Ph.D.,

taken on behalf of the Plaintiff and

Cross-Defendants, at Morrison & Foerster LLP,

425 Market Street San Francisco, California,

commencing at 9:15 a.m., Friday, December 16, 2016,

before Rebecca L. Romano, Certified Shorthand

Reporter No. 12546

Highly Confidential - Attorneys' Eyes Only  
Steven Knapp Ph.D. - December 16, 2016

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1           A.    There were 312, I believe, in that --  
2           that Doug had, and there were some 290 or so that  
3           were -- that we discovered in Irvine.

4           Q.    So 3 -- 312 2012s up north and 290 2012s  
5           from south?

6           A.    Right.

7           Q.    And so that is?

8           A.    About 600, 601.

9           Q.    602.

10          A.    Yeah.

11          Q.    So you have discarded approximately 400  
12          of the 2012 genotypes?

13          A.    Right.

14          Q.    Do you maintain any -- any copies of the  
15          genotypes you've discarded?

16          A.    No.

17          Q.    So those 400 are just gone from the  
18          collection; is that correct?

19          A.    Correct.

20          Q.    Were any of those on the discard list  
21          that Doug had left behind?

22          A.    I believe so, yes.

23          Q.    So, in essence, if you had followed  
24          Doug's instructions and the evaluations he had  
25          done, it would have saved you some work; is that



## ERRATA SHEET

Case Title: California Berry Cultivars, LLC v. The Regents of the University of California (U.S.D.C. N.D. Cal. Case No. 3:16-cv-02477-VC)

Testimony of: Steven J. Knapp, Ph.D.

Date Taken: December 16, 2016

Reason Codes: 1. To clarify the record.  
2. To conform to the facts.  
3. To correct transcript errors.

Page 128 Line 20 – change “That’s correct.” to “That’s correct, although Julia Harshman worked on strawberries at University of Maryland as well.”

Reason: 1

Page 197 Line 60 – change “76” to “576”

Reason: 3

Page 202 Line 17 – change “Yes.” to “I don’t know.”

Reason: 2

Page 203 Line 4 – change “Yes.” to “No.”

Reason: 2

Page 204 Line 6 – change “No.” to “For the Scarlet that we have, which is a USDA plant introduction, we do not need a license because it is a publicly available European cultivar.”

Reason: 2

Page 207 Line 12 – change “allow head-to-head comparisons” to “allow head-to-head comparisons without a license”

Reason: 1

Page 207 Line 23 – change “Correct.” to “Correct. We are using the publicly available Scarlet variety.”

Reason: 2

Page 208 Line 18 – change “No, that wouldn't be surprising to me.” to “No, that wouldn't be surprising to me, so long as they had a test agreement.”

Reason: 1

Page 214 Line 25 – change “It was due to the use of high-elevation” to “Liz said it was due to the use of high-elevation”

Reason: 1

Page 215 Line 21 – change “the concern was” to “Liz’s concern was”

Reason: 1



Page 216 Line 19 – change “Correct.” to “I don’t know.”

Reason: 2

Page 216 Line 21 – change “Correct.” to “I don’t know.”

Reason: 2

Page 217 Line 16 – change “Yes, I believe.” to “Yes, I now believe.”

Reason: 1

Page 223 Line 13 – change “We chose to split the planting.” to “We originally chose to split the planting for reasons independent from Lassen. However, we did a second planting at Cedar Point after we had concerns about the relationship with Lassen.”

Reason: 2

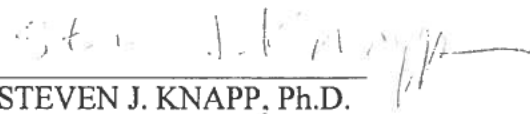
Page 224 Line 1 – change “That is correct.” to “That is correct, for the embryo within the seed only.”

Reason: 1

Page 353 Line 17 – change “Correct.” to “Correct, there is no longer a risk.”

Reason: 1

Subject to the above changes, I certify that the transcript is true and correct.

  
STEVEN J. KNAPP, Ph.D.

# EXHIBIT E

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**From:** Mary E. Delany <medelany@ucdavis.edu>  
**Sent:** Monday, March 23, 2015 8:42 AM  
**To:** Ag Kawamura  
**Cc:** Jacob A Appelsmith; Steven J Knapp; Mary E. Delany; Helene R Dillard; Karl M Engelbach  
**Subject:** RE: Opportunities for progress...transition cultivar time frame request 3-22-15

Dear AG,

Thank you for all the continuing conversation to this point. I do look forward to future interactions and I know the more you become involved with our new breeder and his developing program that you will come to believe there are great things ahead for strawberry agriculture.

I have thought much over the last few days of our recent conversations with Jacob and Karl on Thursday, and then by phone with you on Friday wherein I let you know that our decision stands that we will not be transferring the transition cultivars or strawberry germplasm (*writ large*) to CBC or to Dr. Shaw's as an employee of CBC under the current set of circumstances.

Also, I have to mention that I do not agree that it is '*just as simple as the two docs getting together alone in a room to work things out*'. The issues are far more involved than that simple solution suggests and I don't agree that such a meeting is worthy at this particular juncture. Dr. Knapp has numerous activities underway that we should all be very, very excited to see progress as quickly as possible.

I acknowledge your renewed request as outlined in your email below that we provide ~145 cultivar copies, but we will not be proceeding with such a transfer.

Dr. Knapp will be directing the multiplication of the cultivars during this season (expedited planning underway) and we welcome Dr. Shaw's and/or Dr. Larson's assistance and cooperation in the context of the UCD program.

Best,

Mary

**Mary E. Delany, Ph.D.**  
**Professor, Developmental Genetics**  
**Fiddymment Endowed Chair in Agriculture**  
**Department of Animal Science**  
**and**  
**Executive Associate Dean**  
**College of Agricultural and Environmental Sciences**  
**University of California, Davis**  
**530-752-0233**  
[medelany@ucdavis.edu](mailto:medelany@ucdavis.edu)

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**From:** Ag Kawamura [<mailto:ag.kawamura@ocproduce.com>]  
**Sent:** Friday, March 20, 2015 5:00 PM  
**To:** Mary E. Delany; Steven J Knapp

**Cc:** Doug Shaw

**Subject:** Opportunities for progress...transition cultivar time frame request

Hello Mary and Steve,

Thank you both for your willingness to discuss with me the various issues and opportunities for progress! As a result of our discussions, one area of agreement we shared was acknowledging that the clock was ticking on the transition cultivars and that we should move forward at least with the physical planting of identified plant selections. In the ordinary course of Prof. Shaw's program he would have been planting these "spring" selections up at the Lassen Canyon Nursery. Since Prof. Knapp is planning cultivar plantings at the same nursery, I would like to request that you authorize a release of a copy of about 145 plants from the Department's collection to Prof. Shaw. Complete copies of the selected 145 plants would remain with the Department. Next week, Doug's team members could pick up the identified plants and move them to the Lassen Canyon Nursery facility at Manteca where they can be accounted for and cared for through Lassen staff protocols. I am making this request so that another year is not lost and that it would also create an atmosphere of cooperation!

A part of the timing challenge is that Prof. Shaw is leaving for Europe this weekend on a long planned trip. Steve, upon his return he will contact you and I am confident that all of you can agree on a collaborative work framework that would move our programs forward. I was excited to know that your good focus on preserving and enhancing the germplasm collection is yet another example of investing in the future viability of our strawberry industry! We certainly do need to keep seeking solutions as we have some very serious cultural challenges ahead of us. Thank you and please advise at your earliest convenience. Best regards, AG

# EXHIBIT F

CONFIDENTIAL

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

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 CALIFORNIA BERRY )  
 CULTIVARS, LLC, )  
 Plaintiff, )

vs. ) No. 3:16-cv-02477-VC

THE REGENTS OF THE )  
 UNIVERSITY OF )  
 CALIFORNIA, a )  
 corporation, )  
 Defendant. )

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 THE REGENTS OF THE )  
 UNIVERSITY OF )  
 CALIFORNIA, a )  
 corporation, )

Cross-Complainant, )

vs. )

CALIFORNIA BERRY )  
 CULTIVARS, LLC, DOUGLAS )  
 SHAW, and KIRK LARSON, )  
 Cross-Defendants. )

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 )

CONFIDENTIAL TRANSCRIPT

VIDEOTAPED DEPOSITION OF DAVID NOLTE  
 Los Angeles, California  
 Tuesday, March 14, 2017

Reported by:

LORI M. BARKLEY

CSR No. 6426

Job No. 2556145

PAGES 1 - 135

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CONFIDENTIAL

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

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CALIFORNIA BERRY )  
 CULTIVARS, LLC, )  
 Plaintiff, )  
 vs. ) No. 3:16-cv-02477-VC  
 THE REGENTS OF THE )  
 UNIVERSITY OF )  
 CALIFORNIA, a )  
 corporation, )  
 Defendant. )

---

THE REGENTS OF THE )  
 UNIVERSITY OF )  
 CALIFORNIA, a )  
 corporation, )  
 Cross-Complainant, )  
 vs. )  
 CALIFORNIA BERRY )  
 CULTIVARS, LLC, DOUGLAS )  
 SHAW, and KIRK LARSON, )  
 Cross-Defendants. )

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Videotaped Deposition of DAVID NOLTE,  
 Volume I, taken on behalf of Defendants, at 555 South  
 Flower Street, 50th Floor, Los Angeles, California,  
 beginning at 9:11 a.m., and ending at 2:02 p.m., on  
 Tuesday, March 14, 2017, before LORI M. BARKLEY,  
 Certified Shorthand Reporter No. 6426.

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1 BY MR. OVERSON: 10:03:29

2 Q. What do you mean when they say "the years 10:03:29

3 four, five, six, seven, eight are correct"? 10:03:31

4 A. Well, there's -- there's two things shown in 10:03:33

5 that column, and I was reading to you part, or call 10:03:35

6 it half, of the label in table 2, and it's clear from 10:03:41

7 your questioning that I should revisit the labels of 10:03:46

8 the number of years, but -- but what this calculation 10:03:51

9 does is addresses the impact of reducing the -- how 10:03:58

10 long it takes to develop a cultivar and how many 10:04:04

11 cultivars are missing. 10:04:07

12 Q. Can I ask you to turn back to Exhibit 1, 10:04:10

13 which is your first report, and I'm looking at page 3 10:04:48

14 of 8 of Exhibit 1 and specifically at paragraph 2, 10:04:50

15 which has the entry, first sentence (as read): 10:04:57

16 The following nine cultivars were 10:05:00

17 developed by Drs. Shaw and Larson 10:05:02

18 and have at least five years of 10:05:05

19 licensing history. 10:05:07

20 And then there's a listing of nine names of 10:05:12

21 cultivars. Where did you get these cultivars from? 10:05:14

22 A. I note a U.C. document that identifies 10:05:21

23 these. The timing or identification of cultivars in 10:05:29

24 which only Dr. Shaw and Larson were involved were 10:05:37

25 provided by Dr. Shaw. 10:05:41

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1 Q. Why did you mention only Dr. Shaw and Larson 10:05:53  
2 involved? You're saying there are other cultivars 10:05:56  
3 that have other co-inventors and you excluded those 10:05:58  
4 or -- 10:06:02

5 A. Correct. 10:06:02

6 Q. And so is it correct that Dr. Shaw 10:06:02  
7 identified these nine as the one you should orient 10:06:06  
8 on? 10:06:11

9 A. I would not agree with what you are 10:06:11  
10 describing, the way you said it. I mean, there's no 10:06:13  
11 doubt that I had a conversation with Dr. Shaw and the 10:06:16  
12 result of the conversation were that these nine were 10:06:20  
13 identified, but it's not quite the way your question, 10:06:23  
14 it was phrased. 10:06:27

15 Q. Did you have -- you're aware that there are 10:06:28  
16 many, many more cultivars that were commercialized by 10:06:31  
17 Dr. Shaw and Larson when they were at U.C. beyond 10:06:36  
18 these nine, true? 10:06:40

19 A. There were -- 10:06:43

20 MS. SMITH: Objection, vague. 10:06:44

21 THE WITNESS: There are cultivars that 10:06:48  
22 occurred subsequently, for which there was less than 10:06:49  
23 five years of history, and there were cultivars 10:06:53  
24 before that time, for which other breeders were also 10:06:56  
25 involved, and so that's a longer way of agreeing with 10:07:01

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CONFIDENTIAL

1 STATE OF CALIFORNIA ) ss.

2 COUNTY OF LOS ANGELES )

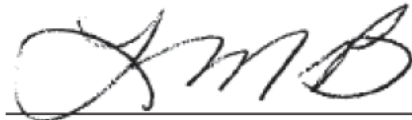
3  
4 I, Lori M. Barkley, CSR No. 6426, do hereby  
5 certify:

6 That the foregoing deposition testimony  
7 taken before me at the time and place therein set  
8 forth and at which time the witness was administered  
9 the oath;

10 That the testimony of the witness and all  
11 objections made by counsel at the time of the  
12 examination were recorded stenographically by me, and  
13 were thereafter transcribed under my direction and  
14 supervision, and that the foregoing pages contain a  
15 full, true and accurate record of all proceedings and  
16 testimony to the best of my skill and ability.

17 I further certify that I am neither counsel  
18 for any party to said action, nor am I related to any  
19 party to said action, nor am I in any way interested  
20 in the outcome thereof.

21 IN WITNESS WHEREOF, I have subscribed my  
22 name this 28th day of March, 2017.

23  
24 

25 LORI M. BARKLEY, CSR No. 6426

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